

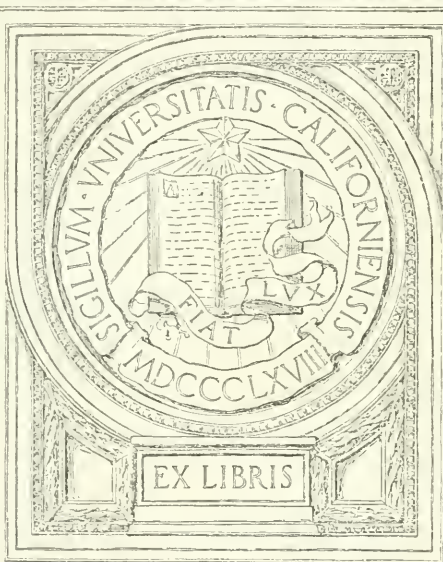
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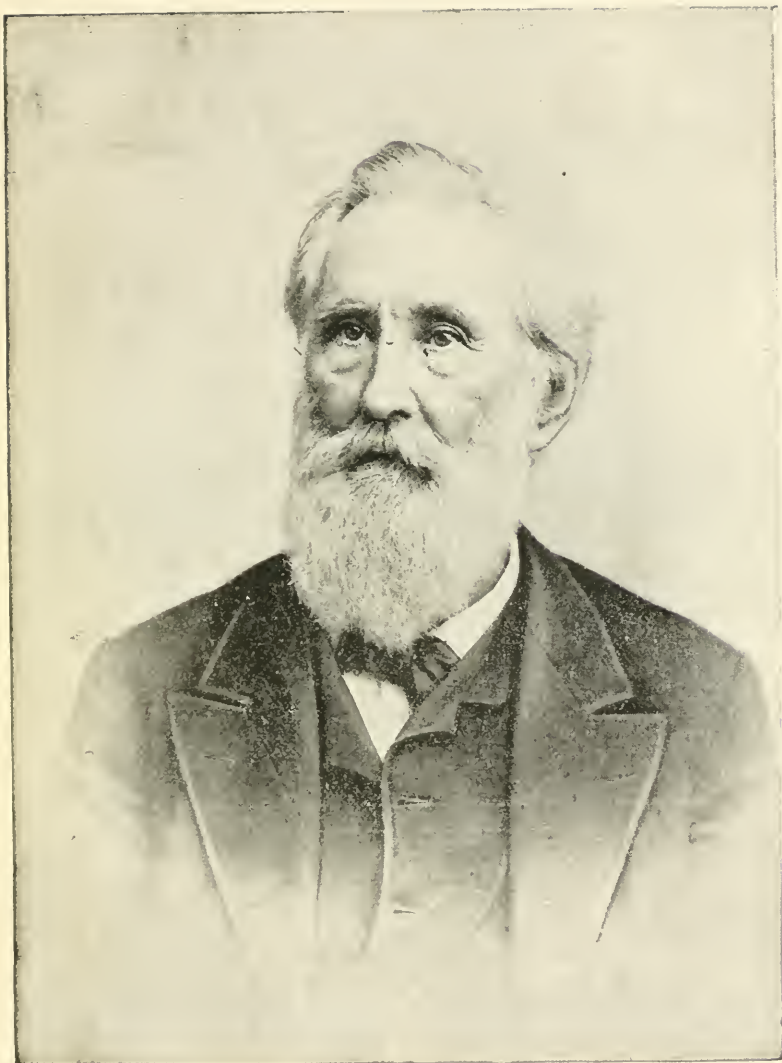
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O. W. Roberts. 1887.

OUR FEDERAL RELATIONS

FROM A SOUTHERN VIEW OF THEM.

BY O. M. ROBERTS,

AUSTIN, TEXAS.

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1892.

A DEDICATION.

Perpetual change is the law of creation. When will man be wise enough, and good enough, to prevent the changes in organized society from being evils to some persons, and special benefits to others?

Possibly, when he learns, and acts on the conviction, that there are other precious things to live for, besides gold for himself and over others.

To the young men, who will aspire to reach that elevation of human excellence, this little work is respectfully dedicated.

ALL TO VINE
ALL TO TA
ALL

PREFACE.

OUR FEDERAL RELATIONS.

This little volume consists of Lectures, and Addresses, intended to exhibit our Federal Relations, from a Southern standpoint. They were prepared during busy engagements in other employments, without any effort to attain to literary excellence; the leading object being to bring to view such facts of history, such acts of the government, and such views relating to them, as would tend to give the young men of the present time a fair general understanding of the subject. It has been published at the request, and with the assistance of, the Law Classes of the University of Texas, at its present session, 1891-2.

The two addresses have been introduced with the lectures, to exhibit more strikingly the sentiments of the people of Texas, in regard to their Federal relations, at the times to which they relate, and when they were published.

It will be found, that the same facts and conclusions are contained in several of the lectures to the extent, that was necessary to elucidate the subjects under consideration in each one of them, which however, may but serve to make a more thorough comprehension of the subjects.

THE AUTHOR.

January 1, 1892.

CONTENTS.

	Page.
1. LECTURE : The Causes that led to the War between the States North and South	5
2. ADDRESS : On the Crisis in 1860, then imposing a duty upon the People of the South, and exhibiting the Wrongs done by the Northern States	21
3. LECTURE : On Sovereignty; its location and effects in the Governments of America	50
4. LECTURE : On the Close of the War, and President Andrew Johnson's Reconstruction of the Southern States, including the State of Texas	69
5. ADDRESS : In 1867, by the Texas Delegation elected to Congress, giving reasons for their admission, and making a protest against the Military Government and Revolutionary Measures then being prepared by Congress. Drawn up by O. M. Roberts, and signed by the others present in Washington, and published in the <i>National Intelligencer</i> , January 10, 1867	81
6. LECTURE : The Congressional Reconstruction of the Southern States, and especially its revolutionary change of the Federal Government, and its operation in Texas	94
7. LECTURE : A Supplement to the two Reconstructions, exhibiting the effects of the action of the Military Authorities, in the effort to govern the People	111
8. LECTURE : Constitutional Government in the United States. Its revolutionary changes in its Powers and Objects, by construction and assumption	128
9. LECTURE : On the Violations of the Rights of Private Property, by American Governments	146
10. LECTURE : On the History and Burden of Taxation in the United States and in Texas	160

APPENDIX NO. 1.

11. LECTURE : In the University of Texas, by O. M. Roberts, Law Professor, February 26, 1892,—On the Use and Misuse of the Principle in the Expressions in the Declaration of Independence, written by Thomas Jefferson: "All men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness"	I-23
--	------

APPENDIX NO. 2.

12. LECTURE : On the Evolution of the Government of the United States, from a Federal Government in 1790, to a National and Paternal Government in 1890, by its action during one hundred years	I-16
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THE CAUSES OF THE WAR BETWEEN THE STATES.

PUBLIC LECTURE IN THE UNIVERSITY BY O. M. ROBERTS, LAW PROF.

The causes which led to the late civil war between the North and South may be traced back to the formation of the government of the United States. The very great and good men who were in the Convention that framed the Constitution, were not agreed among themselves as to the shape and powers of a government which would be best suited to the American States. A portion of them were in favor of the erection of a strong central government; while others were in favor of interfering as little as possible with the rights of the States. The Constitution was a compromise of these conflicting views. It was a compromise, under a pressure, by the use of general terms, that harmonized their action for the time, without changing or remoulding their respective opinions. As an entirety, it was not responsive to the judgment of either party. The same difference of opinion existed among the people of the States for whom it was made, and has continued to exist to the present time. The Constitution, from its brevity and generality, is necessarily the subject of construction; and each party has been inclined to construe it so as to make this government, in existence under it, conform to their own views of what it should be.

The preponderance of the Northern mind has ever been predisposed to extend and enlarge the powers and objects of the general government by a liberal construction. The preponderance of Southern mind has been predisposed to a strict construction, by which the action of the general government should be confined within its well recognized powers and objects. Massachusetts, the mother of Northern States, is the type of the former principle. Virginia the mother of Southern States, and author of their leading ideas, is the type of the latter. As a matter of mere philosophical enquiry, without any partisan bias, it is easy to perceive that Massachusetts must have had greatly the advantage of Virginia in this struggle, from the continual influence of the prevailing interests, prejudices, passions, and changes of public sentiment, in a popular government. Virginia statesmen were placed in the position of demanding the "bond" in every instance, although it might present a case of great public inconvenience or hardship; whereas

the liberal constructionist could avail himself of every popular furor, every pressing necessity, or plausible pretext of interest, to enlarge the powers and objects of the general government.

Without discussing, in detail, the various important measures and events, which mark the history of the general government, it will here suffice to say, that this struggle of enlarging the powers and objects of government on the one hand, and of confining and restraining them on the other, entered, with more or less influence, into almost every one of them; so that the conflict has been incessant from the origin of the government to the present day. When one subject would rise up into public action, pass through the ordeal, and find either a permanent or temporary quietus, by the popular verdict on one side, or by concessions and compromise, another subject would soon be found to raise the same questions, and elicit the same strife. Sometimes the government has been administered upon one principle, and sometimes upon the other, and sometimes upon a combination of both for a time; but however allayed for a season, in every turn of public affairs, the two principles would rise up in antagonism. The breach between them has regularly grown with the growth and expansion of the government, and, instead of being healed, continued to widen more and more with the settlement of every question. This has resulted, in part, from an increasing diversity of interests influencing the minds of those who governed the country, and in part from the diversity in the force of political obligation upon the minds and consciences of men, induced by different mental training, and different mental organizations. In the first days of the Republic, the difference of interest between two sections, north and south, had not become so great as to manifest an immediate localization of these different principles of construction. By degrees however, they were more and more localized in proportion as the South became more exclusively agricultural in its industrial pursuits, and the North devoted itself to commerce, manufactures and shipping.

The merchant, the manufacturer, the ship owner, the ship builder, and the capitalist generally who make profit on trade, are ever ready to enlist the action of government in aid of their profits or speculations; and their business relations, wealth and intelligence generally give them an influence sufficient to accomplish their objects. The agriculturist, on the other hand, is isolated, and rarely ever claims any bounty for his labor other than that which is conferred by a generous soil and his own industry, with his rights of person and property protected.

Thus, the Northern people acquired the habit of applying to the general government for aid directly or indirectly in their leading pursuits, and were consequently constantly seeking to enlarge the powers and objects of its action. This was granted to the prejudice of the Southern people, who obtained no corresponding ad-

vantages to their pursuits, from the action of the general government.

A country shapes the character of its inhabitants. Its characteristics and surroundings influence largely their destiny. The North abounded with good harbors and inlets, navigable rivers and lakes; was situated in the northern portion of the temperate zone, near the northern fisheries, with a rugged surface, comparatively barren soil, and cold climate, and its people were therefore naturally led to manufacturing and commercial pursuits. The South had but few good harbors and navigable rivers, and was spread out in fertile plains, with a genial climate, adapted to the richest staples of commerce, cotton, tobacco, rice and sugar. The European immigration followed the channel of commerce, and poured into the northern parts with a constantly swelling tide, making labor abundant, which is the foundation of national wealth. This, with the enhanced value of tillable lands, rendered slave labor valueless there, and caused the Northern States, to pass emancipation laws, by which the negro slaves, instead of being set free, were transported to the South, and sold to those who could use them with profit in agriculture. After 1808, by a provision in the Constitution, no more African slaves could be imported, and European emigrants had a repugnance to settle in a slave-labor country; by which the South was made dependent, for an increase of population and labor, in the main, upon the natural increase of its own white and negro population; and in consequence of its vast extent of fertile territory, labor was always scarce, and not adequate to its development.

Under the state of things here presented in the North, individual prosperity sought an investment of its surplus in companies or associations, private or public, by which they were taught the advantages of combination—combination of capital, of effort, and of mind—which resulted in building up their common schools, their high schools, their commerce, their manufactories, their shipping, their railroads, canals, other internal improvements, their domestic economy, and their improved agriculture. And in all these pursuits, whatever could not be done by individual enterprise was consummated by the co-operation of individuals, or the aid of government, state or federal, applied either directly or indirectly.

Under the state of things here presented in the South, an exactly opposite result was produced. Individual prosperity sought an investment, for its surplus, in the acquisition of broader fields, and more slaves for laborers. The more wealthy the individual became, the more exclusive he became, and the less he was inclined to seek co-operation in anything, and the less he looked for governmental appliances for aid. All he asked or wanted from government was to be let alone, with only the general protection of the laws.

Thus were the people of the two sections being stamped with distinctly different characters in their industrial pursuits, and habits of life. The one, skilled in all the arts of co-operative effort, extending from the private co-partnership, up through all the diversity of combinations, to the co-operative action of the government, state and federal. The other was exclusive in individual effort, self-reliant, without co-operative aid, whether of individuals or of governments. With the one, government was made for general equal protection, and not for private advantage otherwise.

This view may serve somewhat to explain why the Northern people, without apparent consciousness of wrong, have so persistently sought to enlist the general government in aid of their various industries, interests, and peculiar views; and, when necessary for that purpose, to enlarge the powers and objects of the general government; as well as why the South, in dismay, and with the repugnance of what to them seemed unreasonable exactions for private advantage, and dangerous aggressions, have declined to seek their own private aggrandizement from the action of the general government, have so often asked "to be let alone," and have continually sought to keep the action of the general government within the scope of its recognized powers and objects, as originally designed by its framers.

The great West, varying in its leading characteristics from both North and South, being nevertheless peopled mostly by emigrants from, and tributary in its commercial relations, to the North, has always been more allied, in sentiment and action, to the North than to the South. The contrast here exhibited must also be understood with the qualification that it is only an attempt to delineate the general preponderance of character, and of public sentiment of each section; for there have always been individual instances, even to the extent of sometimes controlling States, wherein a strict construction has prevailed at the North, and a liberal construction at the South. Upon such subjects as the alien and sedition laws, a national bank, internal improvements, a protective tariff, the acquisition of territory, the exercise of the veto, nullification direct and indirect by a State, the right of secession, and the like, some diversity, and often very great diversity of opinion was to be found in each section, notwithstanding the general preponderance as previously portrayed. The difference in the original organizations, habits of thought, theories of government, and educational bias, in different persons of each section was sufficient to produce some difference of opinion and action on most if not all of such subjects, notwithstanding the interest of each section might point to a construction different from that of the other.

At last, however, a subject was found which, in the end, completely enlisted and arrayed the controlling sentiments of the North on one side, and those of the South on the other; and that was the

subject of the institution of African slavery in the South, existing in fifteen States in the Union. As this subject, in its origin, progress and results, presents one of the most remarkable phenomenon of any age, constitutes a new era in the history of America, and will likely in the end change fundamentally its whole system of government, it may be well now to take our reckoning, so as to ascertain the theories of the government, as evolved by the other antecedent subjects, that had moved it into action.

The following propositions may be regarded as sufficiently presenting the theory of the strict constructionist. First, the Constitution of the United States is a written compact, entered into between independent sovereign States, by which they formed a general government of delegated, limited powers, and, in addition thereto, bound themselves as States to do and refrain from doing certain things therein specified; which resulted not only in forming a general government of all the States for special objects, but also in regulating a whole system of governments in federative union, each government, state and federal resting upon the basis of delegated authority, derived from the people of each State as a subsisting sovereignty.

Second. From this it follows, that if the general government exceeded its delegated authority, or used the power delegated to it for the purpose of accomplishing objects not contemplated in the scope of its direct action, or if the general government, to the prejudice of any of the States, failed to perform its appropriate functions to the extent of the powers delegated to preserve the equal rights of all of them; or if the States themselves failed to perform the obligations which they had assumed to the other sister States, by the stipulations contained in the Constitution of the United States, the State so aggrieved, in the exercise of an inherent right, never delegated or parted with, might withdraw the powers which it had delegated to the general government, as contained in the Constitution of the United States, and thereby dissolve its federative connection with the other States, leaving the Union still perfect as to those States that chose to remain in it.

Those who entertained such views regarded the safety of the Union, with all of its blessings and benefits, to depend upon the good faith of the States in performing their assumed obligations, upon confining the action of the general government within its certain constitutional limits, and in avoiding a construction that would lead to the exercise of doubtful powers, or their perversion to objects not contemplated in the Constitution.

The following propositions may be regarded as sufficiently presenting the theory of the liberal constructionists. First: The Constitution of the United States is a social compact, entered into between the mass of people of all the States, forming a government of limited powers, constituting a new nation, a new sovereignty, carv-

ed out of the sovereignty of the several States, leaving in the States a portion of their original sovereignty, upon which their State governments are founded, forming an indissoluble union of States partly confederative and partly consolidated; and constituting, with the States composing the union what is sometimes denominated a compositive government, each one of the separate States having a divided sovereignty. Second: That the Constitution furnishes all of the peaceable remedies for grievances in the ballot-box, in representation, in the decisions of the Supreme Court of the United States, and in a change of the Constitution. Third: That outside and above the Constitution, is the right of revolution, which is simply the right of might. While some, who have entertained this theory of the government, have been strict constructionists, the liberal constructionists have universally entertained it as the correct one.

Amidst the galaxy of governments thus associated, the general government has always been most conspicuous, and has most attracted the attention and concern of the people of all the States. Indeed, its measures and action have given direction to the political parties, and political action of all the State governments. Liberal constructionists, who have constantly looked upon it as the government of a "nation," have naturally enough fallen into the habit of looking to it to develop the resources of the "nation," and to provide for the general welfare; and therefore have sought to construe its powers to be adequate to those ends, either by direct or indirect action.

The North, as liberal constructionists, could get an advantage over the South, in the action of the general government, by the fixed unchangeable industrial pursuits of each section. For instance, the South could not manufacture for the want of labor and capital to be devoted to it; the North could and did. The general government was not made to foster and build up manufactories; still it was caused to accomplish that very object by the indirection of a specific protective tariff upon such articles of commerce as were manufactured in the North. It was not made to encourage the catching and importing of fish, still it was caused to accomplish that very object by the indirection of a fish bounty, as a substitute for a draw-back on the salt used in curing the fish that were exported. It was not made to relieve the monetary distresses of commercial communities by the facilities of paper money, still it was caused to accomplish that object by the indirection of regulating the currency through a national bank. It was not made to improve agriculture; still, to meet the wants of improved agriculture, it was caused to attempt that project by covertly attaching an agricultural bureau to the patent office, which has matured into a department. The same may be said of various other measures, as well as these, which the liberal construc-

tionists were continually struggling to engraft upon the government; and which the strict constructionists were ever earnestly struggling to prevent. Still, this was the extent to which the controversy and conflict had reached when abolition arose, as a black speck upon the Northern horizon.

From the year 1840, the abolitionists had put up a candidate of their own at every presidential election. This was done to secure and preserve a separate organization. Birney was twice their nominee, then Hale, then Van Buren, then, in 1856, Fremont. Under none of these was there a perfect alliance between abolitionism and federalism, which was so necessary to attain their objects. Without such connection abolitionism, in its varied modifications in form and in intensity, was wholly powerless to affect slavery within the States, or otherwise, by any action of the general government. The power and compass of intellect necessary to effect their union all over the North, are attributed to Mr. William H. Seward, more than to any and all other politicians (it is believed deservedly so), and it found its full public authoritative expression in the political platform under which Mr. Lincoln was elected president.

Some remarkable circumstances attended the rise and progress of this sentiment of hostility to Southern institutions, which deserve to be noticed. It first took firm foot-hold in the New England States, and spread westward in the regions most remote from slavery, and gradually approached the Southern States, moving southward. The borders of the States of Pennsylvania, Ohio, Indiana and Illinois, which were nearest to, in contact with, and the best informed about, the institution of slavery, were the least and last arrayed against it.

In its origin, the statesmen of all parties opposed abolitionism directly, and continued to repress it from rising into public action, by all of the party machinery which they could bring to bear upon it. By degrees it displaced all those in position that would not yield directly or indirectly to its influences, and supplanted them by bringing upon the stage of public action new and unheard of actors, either partially or wholly devoted to their cause, just as they might hold the balance of power, or entire control in their elections. Under its influence, all of the old standards of public sentiment disappeared, and were numbered with the things of the past.

The Northern idea of the destiny of Northern civilization has also had much to do in all this struggle for supremacy. It is the bold conception of the supreme excellence of the civilization planted on Plymouth Rock by the Puritan fathers, destined to spread itself, first, over the United States, then over the American continent, and lastly, to revolutionize the world, by its example and power. In it is embraced their ideas of progressive religion,

education, society, industry and government. It embodies all the pride and ambition of the Northern people, both as a universally inspiring individual, and a concentrated, aggregated national sentiment. Southern slavery stood in its way, resisting its progress, as a wall of stone more powerful than that of China, erected to withstand the despoiling inroads of northern barbarians. That wall has fallen before the angry surges of its overwhelming tide.

Such are some of the proximate causes of the downfall of the institution of slavery in the South. If, however, we look back through the history of the country, we will find more remote causes, which fixed its future destiny; the first one of which was the concession of Virginia of the northwestern territory to the United States, accompanied with the prohibition of slavery therein. That excluded slavery from the vast region of fertile country in Ohio, Indiana and Illinois, into which the slaves of the Northern States would have been carried, instead of being pressed down upon the South for a market, and into which slaves would have been carried by emigrants from Maryland, Virginia and North Carolina in the regular tide of emigration westward. Most of that country was well adapted to slave-labor had slaves remained cheap. While their importation from Africa continued, their usual price, in the towns on the sea-board where they were landed, was one dollar per pound. So, too, the Missouri compromise in 1820, excluding slavery in all of the territories of the United States north of $36\frac{1}{2}$ degrees, north latitude, had the same effect. But above all other of those causes was the grant of the power to Congress in the Constitution of the United States, of prohibiting the African slave trade after the year 1808. That was the prospective surrender of slavery as a permanent institution on the North American continent. It made slaves become dear; so that they could only be profitably employed in the mild climate of the South. It diminished the number of slave owners. That diminution continued relatively to increase in proportion to the general increase of population in the United States, not only from the natural increase, but also from the large influx of white emigrants flowing in a constant stream from Europe, and filling up the Northern and Western States. This acquisition by immigration continued to increase until it reached a fourth of a million annually. The South acquired but few immigrants comparatively. Hence the North greatly outstripped the South in the material development of their country, as well as in voting population. And hence, also, they gradually acquired a superiority over the South in wealth, and in influence in the councils of the country.

The agitation of the slavery question was started in England, and was formally commenced in America by the formation of abolition societies in the North. As early as 1833, a great Southern senator (Mr. Calhoun) pointed out the danger of recognizing, in

the general government, the overwhelming centralizing powers then so popular, and warned the country that the people of the North, believing slavery to be a sin, and a great political as well as moral evil, would feel themselves responsible for what the government, with such powers, through their vote and influence, might reform; and would petition Congress to abolish slavery. In 1837, only four years later, such petitions as he had anticipated were sent in great numbers to both houses of Congress, from the abolition sections of the Northern States. He resisted their reception upon the ground that, as Congress had no constitutional right to act upon them, it was no violation of the right of petition to reject them; and that the abolitionist only at that time sought to have them received, in order to make Congress the central arena of the slavery agitation. Many statesmen, even from the South, to defend the constitutional right of petition, took the ground that the petitions should be received, notwithstanding Congress had no power to grant the relief prayed for in them. A medium course was adopted, of receiving the petitions, and of laying them on the table, such action not requiring any further notice of them. This controversy was itself sufficient to foist the subject into public notoriety, and raise it from the arena, where it had been previously agitated, the societies, the pulpit, the schools, the social circle, and the press, of the North, into the great political arena of the halls of the National Congress. And that was the object of the petitioners. During the discussions upon this subject, that far-sighted statesman made some remarkable predictions. In his place in the Senate of the United States, he said: "As widely as this incendiary spirit has spread, it has not yet infected this body, nor the great mass of the intelligent and business portion of the North; but unless it is speedily stopped, it will spread and work upward until it brings the two great sections of the Union into deadly conflict. . . . I look not for aid to this government or to the other States; not but that there are kind feelings towards us on the part of the great body of non-slave-holding States; but as kind as their feelings may be, we may rest assured that no political party in these States will risk its ascendancy for our safety. If we do not defend ourselves, none will defend us; if we yield, we will be more and more oppressed as we recede; and if we submit, we will be trampled under foot. Be assured that emancipation itself would not satisfy these fanatics; that gained, the next step would be to raise the negroes to a social and political equality with the whites; and that being effected, we would soon find the present condition of the two races reversed. They and their Northern allies would be the masters and we the slaves. . . . Of all passions, avarice is the most blind and compromising, the last to see and the first to yield to danger. I dare not hope that anything I can say will arouse the South to a due sense of danger. I fear it to be beyond

the power of mortal voice to awaken it in time from the fatal security into which it has fallen."

Had he lived to this day, to have portrayed in general terms the facts of history in connection with that subject, he could not have done it better than he then did in advance of their having happened. Yet, so improbable and far-fetched were they then regarded generally, in the South, as well as in the North, that they attached to him, for a time, the designation of "the great alarmist;" and to prove the truth of the imputation, letters of inquiry were written to, and answers elicited from, many of the distinguished citizens and statesmen of the North, in which it was represented to the public, that the abolitionists, as a class, were insignificant in numbers, and disreputable in character; and that no serious danger was to be apprehended from their efforts or influence. Such, indeed, was the general opinion of the mass of intelligent people of all parties then in the United States. Still, there was, at that very time, forming in Northern society a widespread, strong, deep current of anti-slavery sentiment, not fully appreciable by the statesmen who were being wafted along with and by the waves of the surface. The rattle of the brisk shower upon the house-top concealed the distant roar of the coming storm.

It is true that the abolition societies were held in abhorrence and contempt at first. Those who attempted to speak in public, in favor of the agitation of the subject of slavery as a political question, were often subjected in the North, to maltreatment amounting even to violence. In some places their printing presses were destroyed. Public opinion seemed, from all outward demonstrations, to be arrayed against them as common disturbers of the public peace, and as dangerous disorganizers. They seemed to work blindly, without any attainable object. Slavery was sanctioned by the law of nations, had existed immemorially, had been introduced into the American colonies and States, without any special enactment for that purpose, upon the general recognized principle, that slaves constituted property, as well as any other useful thing; and slaves might be held in any state or nation, where slavery was not specially prohibited by its own local law. In addition to this, all of the States except Massachusetts had slaves when the Constitution was formed; and that Constitution not only recognized slavery in the States, by their partial representation in Congress, but protected it by requiring fugitives slaves to be surrendered by the several States in which they might be found. Fifteen of those States still had slaves amounting, in the aggregate, to the number then perhaps of over four millions, by whose labor the great importing staples of the country were produced, that had added and continued to add to the prosperity of the whole country.

The Southern people were not dissatisfied with the institution of

slavery; and if they had been, they saw no means of relieving themselves of it without producing greater evils to themselves and to the slaves. Notwithstanding all these considerations, which made the attempt at abolition appear to be futile in the extreme—the mere wild ravings of a crazy brain—these societies were formed for that purpose;—not in the South where the evil existed, if an evil it was, but in the North, where there was no such thing. The incidental questions pertaining to slavery had frequently been discussed before in the convention as to its representation and protection, and in Congress afterwards as to the slave trade; and also upon the admission of Missouri as a State in 1820, as to its prohibition in the territories north of a line west of the southern boundary of that State, commonly known as the “Missouri Compromise.” These discussions were engaged in by statesmen seeking to regulate public affairs in relation to this institution, according to what they considered the interests of their own respective States or sections, and not in direct hostility to it. They understood and acted upon their responsibility as public men, with reference to what they regarded as the proper province and constitutional powers of the government. Not so, however, with the leaders and members of these societies. They were, for the most part, private persons, having no connection with the government other than as private citizens, not unfrequently including women as well as men. They were the foam upon the surface of the simmering cauldron of the Northern mind, heated by the universal religious sentiment that slavery was a sin, and would be a national curse, for which they were in part responsible. This sentiment had been forming for half a century or more, and pervaded all classes. The preachers of the North, who have really led in every political excitement there, from the landing of the Puritan Pilgrims upon Plymouth Rock, fostered it in the family, preached it in their pulpits, and made it the fashionable and popular doctrine of all the churches; pressed it into the schools, and filled the press with it—both secular and religious.

It was not a new sentiment just started by these abolition societies, it was then old. What was then new about it was the effort to raise the subject of slavery from its moral, social and religious sphere, in which they had so long confined it, into the sphere of political action. There was every imaginable variety of belief as to when or how this sentiment could or could not, be applied to the action of government; but the sentiment itself was catholic and orthodox. Opposition to it, was schismatic and heretical. Politicians of all the old parties were careful to thank their God that they lived in a State free from the stain and sin of slavery, while they were pouring out their contemptuous ridicule and abuse upon the despicable abolitionists and their societies. But the arguments in the pulpit were all on one side. He was safe at his

sacred desk—safe from ridicule, safe from answer, safe from opposition, in all species of popular orthodoxy. He did not assume to meddle in politics; that was below his calling; but he told his hearers that the institutions of fifteen Southern States were sinful; and prayed to save them from the national curse.

The Northern politician told the people that these United States constituted one nation; and that the great principle that underlay all American governments, was, that the people rule—the majority had a right to govern. The conscientious Christian, guided by these teachings, and aroused to a full sense of their import, could not and would not understand why such a sin could not be put away, and the national curse be averted. If no one pointed out the way, he blazed out one of his own, or followed any one who would lead in that direction.

By degrees it began to work itself up into political action, first in small communities, then in larger sections of country,—gradually growing all the time. It became the one engrossing idea of those who espoused it, as a political idea, which like Aaron's rod, swallowed up all the rest. Its adherents forsook every other political party; or would act with any other political party, to gain influence or to accomplish an object. Very soon, in many places in the North, they were able to hold the balance of power between the two great national parties—Whigs and Democrats. This was their great lever power; and they plied it well and without ceasing, wherever and whenever they could. By it, they got control, first, of counties and sections of States, and finally, of whole States; and by it, eventually they crushed out and overwhelmed all of the other parties, leaving opposed to them only a remnant,—and that a disorganized remnant—of the Democratic party.

Before they could enlist the States in the cause of protecting fugitive slaves from capture by their masters in the free States, they had organized bodies of men who concealed them, or privately conveyed them away out of his reach; and, as public opinion became more in their favor, they raised mobs for the protection of fugitive slaves. This induced Congress to pass more stringent laws for the capture of slaves by their masters, in the free States, in pursuance to the Constitution of the United States. That but provoked them to greater and bolder efforts; and finally the Northern States were induced to pass laws which made it a penal offense, and in some cases a penitentiary crime, for any one to aid the master in the capture of them, thereby, in effect, nullifying a plain law of Congress, and abrogating a plain provision of the Constitution, which required every State to deliver up fugitive slaves escaping into its territory. Thus, by the force of public opinion, and the aid of the State authorities arrayed in their favor, they were enabled to set at naught the action of the general govern-

ment in support of the constitutional rights of the Southern people.

They must aspire higher still. Having subjected the Northern States to their will, they struck for the supremacy in the national council. The exclusion of slavery from the territories and from the District of Columbia, became the favorite subjects of political agitation. The war with Mexico, superinduced by the annexation of Texas and the acquisition of territory at its termination, furnished a fair field for the free-soil agitators in Congress. Through their influence California was slipped into the Union as a free State, without having been organized as a territory; such was their power while yet in the minority in Congress. Congress, however, after a great struggle, determined against them, and established the law that the citizens of the Southern States had the constitutional right to carry slaves into the territories, thereby repealing the rule made in the Missouri Compromise. The Supreme Court decided against them, that a free negro of African descent was not a citizen of the United States. Nothing daunted, they denounced the Supreme Court, and struggled on in opposition to Congress. Massachusetts chartered a company, with a capital of five millions of dollars, styled "The Immigration Aid Society"; and by its instrumentality the territory of Kansas, west of Missouri, was filled with abolition immigrants, settled on the land of the company, and furnished with arms to protect themselves, ostensibly against Southern settlers. An irregular war ensued, which resulted in favor of the North, and which resulted in making Kansas a free State. New Mexico was taken possession of and held by the United States, as part of Texas, in the Mexican war. When peace was made, Texas claimed it as part of its territory. The North clamored for New Mexico as free territory, and disputed our title. The federal government hesitated and prevaricated, holding it under military rule. The people of Texas were aroused with indignation, and were ready to go to any extremes to protect their claim. Its legislature formed a judicial district in New Mexico, and elected a district judge, (Spruce M. Baird, then of Nacogdoches) who went to Santa Fe to execute the duties of his office, and was not allowed to do it by the military authorities then in control of the country, Congress passed a series of measures in 1850, commonly called the "Compromise Measures," one of which (called the Pierce bill) provided for the surrender of New Mexico, by a vote of the people of Texas, for the consideration of ten millions of dollars, one half of which was to be retained under the control of Congress for the payment of the revolutionary debt of Texas. Another one of these measures abolished the slave trade in the District of Columbia. Another one of them settled the constitutional right of citizens to be protected in their slave property in the territories. This, however, was couched in such language of dubious import, as that the

North construed it to give or admit of the right of the people in the territory, under a territorial government, to exclude slavery; and the South construed it to mean that the people of a territory, only when they came to form a constitution as a State, could exclude slavery. This dubious language was adopted on purpose to produce an agreement apparently, and to allay the pending excitement, when in fact, they were not agreed in Congress, and could not have agreed to either one of the constructions, if the language used had been unequivocal. It was a subterfuge upon an emergency. Like all other dodges of the main issue, it swelled the tide of public opinion in the North against the institutions of the South. And that subterfuge caused a sectional division of the democratic party, which secured the election of Mr. Lincoln as President in 1860. Mr. Douglas was the candidate for President representing the Northern Democratic construction. Mr. Brackenridge was the candidate for President representing the Southern Democratic construction. Mr. Bell was the candidate for President representing nothing, under the laconic platform, "the Constitution, Law and Order." Mr. Lincoln was the candidate for President, representing federalism and abolitionism, combined for the first time in harmony and co-operation under a new name, styled the "Republican party," combining the great positive, aggressive and revolutionary idea, that the general government could and must be used to place slavery upon a sure basis of extinction; that it was necessary to the salvation of the North itself under the doctrine, the expression of which he was said to have been the author, of "the irrepressible conflict between free and slave labor," in which was embraced the sentiment so terrible to the North, "that all of the States must be free, or all of the States must have slaves." This was a happy hit in language,—not for its truthfulness, but for its availability to alarm and unite the North.

This leading, positive idea of ultimately freeing the slaves of the South, was stimulated and intensified in the North, by being a part of the religion of the people. It was fostered also by a great many popular kindred or auxiliary ideas,—such as universal liberty, universal equality, the unity of the races, and the susceptibility of all of them to political and social equality by education; the respectability of labor; the laborer is worthy of his hire; the public lands are the heritage of the white man, and should not be occupied by slaves to his exclusion; jealousy and envy towards the Southerner, whose wealth consisted mainly in his slaves; the imputed barbarity of the slave owners, drawn from an occasional and exceptional instance of cruelty, heralded in writings and pictures so as to excite the sympathy and horror of the masses. These and many more such, served to inflame the Northern mind with the strongest, most active, and all-absorbing sentiment that ever possessed the American mind. It was equaled only by that

which pervaded all Europe, when Peter the Hermit preached the first crusade, to induce Christendom to take possession of the Holy Land by arms.

Positive, affirmative ideas always have an advantage, in popular governments, over negative, defensive ideas. But when inflated and inflamed by religion, sentiment, and prejudice, into a fanatical enthusiasm, it is seldom resisted. By such means was Abraham Lincoln elected President of the United States, by the votes of the Northern States, without a single electoral vote in his favor from the South, and by a minority of the voters in the United States.

During all this agitation of slavery in the North, the minds of the people of the South were gradually undergoing a change, both on the right of sovereignty of the States, and on the merits of slavery as a social institution.

Before it commenced the doctrine of State sovereignty was far from being a universal sentiment in the South. Nor was slavery universally approved, as many persons had voluntarily manumitted slaves, by which there were a considerable number of free negroes in the Southern States.

The anti-slavery agitation in the North was looked upon by the Southern people as an officious intermeddling in their affairs by people who had no right or interest in the matter. That prompted them to a more general acquiescence in the political doctrines that afforded protection to their peculiar interest, as well as to a more general assent to the merits of slavery as a social institution, just in proportion to the progress and influence of the anti-slavery movement in the Northern States. Hence the defense of slavery became general, even by most persons who did not own slaves, as well as by those who did. They considered the actions of the Northern States as unconstitutional and unjust in the highest degree, as calculated to injure their rightful property, and to excite servile insurrections. On the northern borders of the slave States, slave property had already become subject to depredations; and the laws of Congress furnished no adequate remedy; and the Northern States being placed in hostility to the institution, a most resentful feeling was engendered in the minds of the people of the Southern States generally.

The strong feeling of antagonism between the two sections, North and South, was reached in twenty years after the anti-slavery agitation began to have a practical influence in public affairs, though the feeling was not at that stage universal in either section. It, however, continued to increase in intensity, and became more general with the occurrence of every public event upon which it could be brought to bear. Already had the Northern States claimed that the acts of Congress to aid slave owners in the capture of their fugitive slaves were unconstitutional, and therefore were not binding upon them. The principle was assumed that a right of prop-

erty could not be vested in human beings as slaves, notwithstanding it had been decided by the Supreme Court of the United States that slavery was lawful by the law of nations, except where it was prohibited locally.

By the great struggle in the presidential election in 1860, the controlling public sentiment in each section reached its extreme culmination, that made them two distinct people, both in political doctrines and in regard to slavery and other material interests. In the North, it was settled that the States united constituted a nation, the life of which in its integrity the general government had a right to preserve; and that its powers could and should be rightfully used in the discouragement of slavery in any and every way practicable, except only by a direct emancipation of slaves within the States; and that the Northern States were justified in resisting or evading the laws of Congress designed to aid the slave holders in the capture of their slaves that fled to the free States. In the South it was settled that the North had placed itself in hostile enmity to their domestic institutions; and that, having not been able to defend them while the general federal government was acting in their favor, it would be vain to attempt their defense after the government should be in control of their political enemies. They considered themselves warranted in that conclusion by the fact that before that election occurred, slavery had, in effect, been practically excluded from all of the territories in which it could be made useful, and that therefore there could be no motive for the further agitation in the North other than to wield the government of the United States against slavery within the slave States. It was settled also that, under the doctrine of federalism and national supremacy over the States, dominant in the North, their other peculiar interests, as States of the Union, could not be equally protected. And further, it was settled that the States retained their sovereignty, and that they had the right to withdraw from the government of the United States the powers delegated by them to that government, and form another central government based on principles consistent with their views of what the United States was originally, and not inimical to their domestic institutions and other material interests. Their effort to do this, although done in a peaceful manner, brought into active operation the assumed right of the general government, under the control of the Northern sentiment, to prevent the withdrawal, and thereby "to preserve the life of the nation"; and that produced the great civil war between the States.

THE IMPENDING CRISIS.

SPEECH OF JUDGE O. M. ROBERTS, OF THE SUPREME COURT OF TEXAS,
AT THE CAPITOL, ON DECEMBER 1, 1860.

HON. O. M. ROBERTS:

Sir:—The undersigned having had the pleasure of listening to your able and instructive address, delivered in the Capitol building on Saturday last, most earnestly request a copy of the same for publication.

Signed, James H. Fry, Clement R. Johns, James E. Rector, J. M. Claiborne, Jno. A. Green, C. R. Johns, Jr., George M. Flournoy, J. Q. St. Clair, C. H. Randolph, George J. Durham, H. W. Raglin, Bird Holland, John B. Costa, E. Rust, R. D. Harris, Wm. Byrd, A. R. Crozier, Geo. W. White, Darius Marsh, M. C. Burditt, H. J. Burditt, H. McBride, T. J. Hill, E. P. Hill, Geo. W. Bowers, Wm. Rust, A. F. Logan, James P. Neal, W. S. Oldham, Ed. Clark.

[There were three thousand copies of this address published and circulated all over the State. As an evidence of its favorable reception by the people, O. M. Roberts was elected president of the Secession Convention by acclamation, in January, 1861. Its publication now may enable the young men of to-day to better understand how our Federal relations were regarded by public men in 1860, after the election of Abraham Lincoln, President of the United States.]

FELLOW-CITIZENS:

A public expression of my views in reference to the impending crisis, has been solicited by gentlemen of all parties. It is a time for all men to speak out. I shall not hesitate to express my opinions freely.

The revolutionary party of the North, have for years past, advanced step by step, towards the destruction of our domestic institutions. It has enlisted State after State in its cause, and now, by an overwhelming sectional vote, has elected a President of the United States. The purpose is, to wield the executive arm of the Federal Government, for the accomplishment of its object.

An indignant and outraged people throughout the whole South,

at once set themselves in action. Our sister Southern States are assembling their collective wisdom in Legislatures, and in conventions of the people, to devise measures, singly or together, to protect their reserved rights. Before the 4th of March next, South Carolina will declare herself out of the Union. Georgia, Alabama, Mississippi, Louisiana and Arkansas, are all moving, and will probably follow her example, or place themselves in the attitude of readiness to do so at pleasure. Virginia and other States are arming and disciplining their people. A single federal gun aimed at a withdrawing State, will kindle a blaze of war from the Potomac to the Rio Grande. The "Lone Star" flag now floats over every city, town, village and hamlet throughout all Texas.

What shall Texas do? As one of her citizens, I am for State action,—action by the constituted authorities of the State,—action singly and conjointly with other Southern States, until we are made secure in our rights, liberties and honor.

Such action should be prompt, calm, deliberate, harmonious and well directed, so as to secure the desired object, and at the same time preserve peace and social order among ourselves. Our allegiance is due to both state and federal governments, because the sovereign power of Texas, at the time of our annexation to the general government, so ordained it, as its will. And until the same sovereign power shall be brought into action, and declare a different will, it is our duty as citizens, to make ourselves subservient to the one as well as the other.

What action then may the people rightfully adopt, in so serious a crisis? The legislature being convened by the governor, may declare the rights of the State, and the infraction of those rights, so as to call the attention of all the States and federal government, to the grievances complained of, in order to effect a remedy, if possible, through public opinion and the ballot-box; and it may provide the means and measures, within its constitutional power, to enable the State to protect its people and their rights from unauthorized aggression. This is what Virginia and Kentucky did in 1798 and '99. They presented an issue, and the verdict of the American people upon it, prostrated federalism from its seat of power, and consigned it to the tomb, for a time.

The legislature may make application to Congress to call a convention of all the States to propose amendments of the Constitution. (Con. of U. S., Art. V.) Could we hope to get two-thirds of the States to join us in a call of a general convention, or otherwise two-thirds of both houses of Congress to propose amendments, and then a ratification of the amendments so proposed, we might hope to obtain more effectual guarantees for the fulfillment of the constitutional compact.

The legislature may also provide for a convention of delegates representing the people in their sovereign capacity. Or such con-

vention may be assembled without a call from the legislature, or from any department of the State government, by concert among the people themselves. Such has been the mode of making the constitutions of several of the States, (Tennessee, Michigan, Arkansas and New York,) which were acquiesced in by the previously constituted authorities, and went quietly and peaceably into operation. There is no authority specially delegated to any department of the existing government to call into action this high power of the people. Nor is its exercise made dependent upon any will but its own. Nor is there any invariably established mode of evidencing the sovereign will, so that it may be recognized as the fundamental law of the land, otherwise than by its being declared, and be put in force by general acquiescence, and by the power of the the people. Or, in other words, there is, and can be no artificial test devised, for ascertaining when the controlling intellectual and physical strength of a people has manifested its will in any particular instance. Should the pre-existing government fail to recognize the act of a convention, as declaring the will of the sovereign power (because it did not represent the people fairly, or for any other reason that might be assigned), there might be a conflict between the old and the new government; which would only be decided by force. Being a political question, courts of judicature are not competent to decide it. Hence, it is important, when practicable, that the legislature of the State should take the initiatory steps for regularly ascertaining the will of the people. If both bodies should be in session at the same time, and the legislature should recognize the convention as competent to represent the sovereign power of the State, the same object would be attained, and all conflict would be avoided.

Such convention, however assembled, might declare the grievances of the State, appoint delegates to sister States, to devise a plan of common redress within the Union, or it might indicate terms upon which the State would continue quietly to perform its duties within the Union. All this might be done without any conflict with the authority of either government, State or federal. By such State action as this, South Carolina made a crisis, which resulted in divorcing the general government from an unconstitutional, discriminating, protective tariff.

Should such convention be assured that it represented the will of the people, the controlling, intellectual and physical strength of the State (which can generally be very well ascertained by the unanimity, ardor, and firmness, with which the mass of the people enter into the movement), and should the violations of the federal compact be deemed so flagrant and dangerous as to require an extreme remedy, it may declare the people absolved from their fealty to the general government, and devise such measures as may be necessary to protect their rights and liberties as an independent

sovereign power. If the officers of the State, and those of the federal government within the State, should not resist the action of the convention of the people, the result would be a peaceful withdrawal of the State from the confederacy. Such action of the constituted authorities, in harmony with, or at least not in opposition to, the sovereign will and power of the people, must always be very desirable, as promotive of social order, whenever a State is driven by the impending danger to resort to this remedy. The remedy itself may be adopted conditionally, for the purpose of placing the State on equal terms in treating for an adjustment of satisfactory guarantees against future violations of its rights, or absolutely for the purpose of final separation.

In all these stages of State action, too great solicitude cannot be felt by all parties, to preserve social order, so that if the federal government should refuse to recognize the right of the State to exercise its reserved right of changing its form of government, and should endeavor to subjugate it, the energies of the people may be united in repelling the invasion. Which one of these remedies may be adopted, it is for the people to say when they shall have found the means of expressing their will. It is my purpose now, to show that the present attitude of public affairs justifies them in adopting either of the remedies that they may think necessary for their safety. I have no fears that inconsiderate rashness will control them. They have pondered upon the issues of this crisis long and well. It is not unexpected. They have their minds made up about it. There is no agrarian spirit abroad in this country. There is no war of classes. There is no conflict between labor and capital. Our people are not asking or seeking to extort any favors from the government to themselves, or deprive others of any rights. They have no motive or desire for a social rupture at home. Their excitement arises from an entirely opposite cause,—a high resolve now to throw themselves into the breach, not to destroy, but to protect rights; not to destroy property, but to protect property; not to destroy life, but to make life worth having; not to produce discord, but to end it. Their excitement is not a shallow, noisy rattle, but a deep, irresistible current, founded on the firmest conviction of the mind. I do not distrust the people of my State. I will not yield to any argument founded on their want of discretion, want of intelligence, want of integrity to act for themselves in a serious emergency, and to act upon it now. They are not disaffected toward the government at all. They love the Constitution of their country; and would regard it now as a great boon to be allowed to live in peace under it, and at the same time to preserve their property, their State equality, and their honor as freemen. But the truth is, that their patience is exhausted by this endless wrangling, raging discord, with which they have so long been beset, this intermeddling interference with their own rights by other people,—this ar-

rogantly assumed control of their destinies by others, the oft-repeated and continued violations of plighted faith, and disregard of a sacred compact. And justly alarmed by the rapid progress of an infuriate revolutionary spirit, which, under the guise and forms of government, threatens to overwhelm them, and destroy their civilization, and ultimately to lay their country in waste, they are rising in their might of outraged manhood, to settle this question. While yet they have strength to maintain the right, they will settle it. Come weal or come woe, now I trust it will be settled. They are in earnest. And now they will demand all their rights, and if they do not get them, they will wrest the Constitution from the grasp of those who mutilate, pervert, and condemn it, and retain it over those States that have always revered and obeyed it. And it shall be *our* Constitution. And under that Constitution, if we be men worthy to succeed to those who made it and gave it to us, we will shape for ourselves a glorious destiny, as the Confederacy of the South. Or, if we should prefer it, let the flag that arose triumphant upon the plain of San Jacinto, and that now flutters in the breeze throughout Texas, be our flag forever.

The great question before the American people is, shall the institution of slavery be put upon a sure basis of gradual extinction. The Northern controlling majorities say it shall. The South say it shall not. And that is the issue. This is our institution,—not theirs. It is a part of our political government, and so recognized in the Constitution of the United States and of the States. It is a part of our social organization. Our industrial pursuits are largely based upon it. It constitutes a great portion of our capital. It is, in its results, the controlling influence that characterizes the civilization peculiar to the Southern States. It composes one-third of our population (about 4,000,000). It is beneficial to both races, the white and the black. Its tendency is to prevent the conflict between capital and labor. There is no conflict between free and slave labor here, one being an advantage to the other. It tends to the perpetuation of our republican institutions, by establishing an inferior class, fixed by law, and known by color; and by promoting the equality of the superior white race. Nor is this a legalized fiction. For the African race is indeed the inferior, intellectually, and for that reason the better fitted for its' position of servitude. Domestic servitude of some sort, is a necessary consequence of any social organization, elevated above barbarism, by its wealth and refinement. Although African slavery is established by power, it is equally true, that, in its absence, the servitude of the weaker and poorer portions of the white race would be forced upon them by the laws which protect property. It is not a matter of choice ever. Being a necessity of society, that same society finds the means directly or indirectly, through the body politic, to force it upon some one. We prefer the enslavement of the African race, because

we believe it is right,—morally and politically right,—that it is sanctioned by revelation, and by the immemorial custom of mankind, and was never questioned until lately,—very lately,—when British interest and religious bigotry made the discovery, that it was exceedingly sinful. We think it better to make servants of the black race than of the white. We do not complain of those who differ with us in opinion. The difference between the North and the South, in procuring menial services required by society, is simply in the mode of applying the force of the body politic, and not in the principle, except that we apply the force to an inferior race, and they to a part of their own, the sons and daughters of their white neighbors.

This crisis involves a great social matter, as well as political. If we were disposed to yield the point, we cannot do so without ruin. What would we do with our slaves. We have no place to send them to, as did the Northern people. They, under the operation of their gradual emancipation laws, did not free their slaves, but floated them down upon us, and got the money for them. We cannot turn them loose amongst us. It would be an act of inhumanity to them. They would have no one to protect them. They would descend to the vilest barbarism. A war of races would ensue, and if they were not exterminated, they would hang upon our society, a demoralizing, degrading element, dragging us down in the scale of civilization.

Our industrial pursuits would also be ruined. The resources of this country cannot be developed, and its prosperity continued without slave labor. In fine, it would make us a different people, in all our leading characteristics, moral, social, domestic, industrial and political. That is simply revolution. And that is what Northern majorities are seeking to force upon us. To us, it is in its final results, a matter of life and death,—politically, socially, and economically. To them, it is speculative experiment, for their and our good, if nothing worse. If we yield to their endeavor to spread their order of civilization over us, it will be a failure. For the mass of free-negro element amongst us, would inevitably prevent it. The nominal freedom of the slave would be purchased at the price of the degradation of the great mass of both races. We cannot, and will not yield. Our domestic institutions belong to our guardianship. No authority has been delegated to any power to circumvent and destroy them. We have reserved the right to control our own destiny on that subject. It is humiliating to have to discuss the propriety of maintaining our reserved rights, with those whom they do not properly concern, and who are intermeddling with them. This aggressive party do not deny our right to maintain slavery within the Southern States where it exists; but they do claim to have the right, derived from their connection with us in the same general

government, to use such means as will eventually so act upon us, as to eradicate slavery within the States. And now, the position which I assume is, that the measures they have adopted, and and have put in operation, and those which must follow in the same train, constitute a character of aggression, that cannot be successfully opposed, or averted, except by prompt State action, and that we are justified in pursuing that remedy to any extremity that may be necessary to secure our endangered rights.

In pursuing this inquiry, the following propositions may be laid down, as embracing the established theory of our government, in relation to the matters now to be discussed.

1st. The Constitution of the United States is a written compact, entered into between independent sovereign States, by which they formed a general government, of delegated limited powers, and bound themselves to do, and to refrain from doing certain things therein specified, which results in regulating a whole system of governments, within the territorial limits of the Union, all resting upon the basis of delegated authority, derived from the people of the several sovereign States.

2nd. Each State, in assenting to, and adopting this Constitution, has in its sovereign capacity, bound itself, its internal State government, its tribunals, officers, and citizens to comply with the obligations thereof, and to support the general government, created by, and administered in accordance with it.

3rd. If this compact, thus entered into, be palpably broken by the deliberate action, or non-action of some of the States, or of the general government, so that important rights of the people of a State are taken away, or permanently rendered insecure, it has the right to judge for itself of the existence and effect of such infraction, and of the means necessary to be adopted for the preservation of such rights; and if, upon mature consideration, it should deem it to be necessary and proper, it may rightfully, acting in its sovereign capacity, pronounce the compact at an end, so far as it is concerned, and use its combined, intellectual and physical strength, to maintain its separate independence, or it may reinvest the delegated powers, thus resumed, in another confederacy, should one be formed by it and other States.

These propositions are intended to embrace a repudiation of federalism in the general government, of nullification by the States while in the Union, and a recognition of a subsisting right of a State to exercise its sovereign power to protect the rights of its people, in the event of a dangerous violation of the compact either by other States, or by the general government.

The leading characteristic of our American government is, that there is a power of governing the people, within the territorial limits of the State, delegated to magistrates, legislators, officers and voters, who, in the exercise of the rights and powers entrusted

to them by a written constitution, and laws enacted in pursuance thereto, constitute the actual government, which is the State; and at the same time there is a power, resting and forever abiding in the mass of the people, within such limits, which, when they choose to exert it, is above and superior to the Constitution and the existing governments, and can make and unmake them, which is sovereignty, and the people embraced in, and composing it are also denominated a State. The former is the body politic organized. The latter is a mass of individuals united in the same community, by the existence of some common or controlling elements of social cement and combination. Each of the several sovereign States divided the powers of government that it wished exercised, and entrusted a portion of them, in common with other States, to a general government, which the same delegation of power by each created, and entrusted other powers to its State government, and others it reserved from all governments. One of the powers reserved, was that inherent right of the people to make and unmake governments, "to alter, reform or abolish their form of government." This was expressly reserved by the people of Texas in their Constitution, and is declared in the Constitution of nearly every State of the Union. New York and Rhode Island, expressly reserved the right to resume the powers delegated to the general government, in the resolutions of their conventions ratifying the Constitution of the United States. There is nothing in the previous history of the States, or in the mode of framing and adopting the Constitution of the United States, or in the provisions thereof, that properly lead to the conclusion, that the States intended to relinquish their State sovereignty, and blend the sovereignty of each and all, into one mass, making one people,—a new nation, then created. The only ground for such an assumption, arising upon the words of the preamble: "We, the people of the United States," etc., "do ordain and establish this Constitution of the United States," is swept away by its history in the convention. When first adopted, and as it stood, until about the completion of the instrument, it read: "*We, the people of the States of Massachusetts, Virginia,*" etc., enumerating thirteen States. The revising committee, whose province was merely literary, changed it, so as to read as it does now, for the obvious reason, that some of those States therein enumerated, might not ratify it. And so it was afterwards adopted. The general government is federative in its creation and organic structure; that is, it was adopted by separate State action, and its executive and legislature are elected by States, each manifesting its will through its own majorities. It is national, only in the results of its action,—that is, by acting directly upon the people of all the States, and by its intercourse with foreign nations, just as if the States were one consolidated people. Such nationality in its action is not in the least incon-

sistent with the separate sovereignty of the several States. For it is no destruction or loss of sovereignty for a State or nation to permit and authorize another power to act on its people for certain objects, by agents appointed by such foreign power. And it surely is no loss of separate sovereignty for two or more States to appoint a common agent, though that agent be itself a government, and associate themselves for common objects, so as to act together as a unit in their foreign relations.

It must be admitted that a State has reserved rights; among which, are her domestic institutions. What use is such a reservation unless she has the right of protecting them? There can be no such a thing as an exclusively reserved right, without the incidental right of protecting it. The very existence of reserved rights in the States, makes the existence of sovereignty in such States a necessity, indispensable in the theory of our constitutional government. Do we hold our reserved rights, subject to the will of majorities in in Massachusetts, Michigan and Oregon? If so, it is simply absurd to say that they have been reserved. If that were the nature of our government, it would be well to strike at once for a change, for we would have no rights pertaining to our internal affairs, which might not be taken from us by majorities one thousand miles from us, by persons entirely ignorant of our condition and interests, and against our unanimous consent. An absolute despot nearer home would be more tolerable. There is certainly no declaration in the Constitution, establishing a loss of sovereignty by the States; and surely so high a power, so sedulously guarded, will not be taken to have been lost by mere inference, unless the facts establishing it are irresistibly convincing.

The facts of history are all on the other side. For the purpose of protecting the rights of its citizens, the State may use its State government, or its sovereign power, just as the one or the other may be applicable and adequate. Which one shall be used, and to what extent it may be rightfully exerted, depends upon the nature of the aggression. If the aggression be in the shape of a physical hostile attack upon their lives or property, either the civil authority or military power of the State government, just as the one or the other, or both may be necessary, may be used for their protection.

If the aggression be in the shape of an unconstitutional act of Congress, acting directly on its citizens (as the sedition act under the elder Adams), then the State government can, as the guardian of the invaded rights of its citizens, remonstrate so as to influence public opinion and the ballot-box; or it may propose condemnatory amendments of the Constitution. Or, if necessary, the sovereign power of the State may be called into action to protest against the aggression, and address itself to their sister States, as well as to the general government, indicating its determination not to sub-

mit to a government that thus usurps authority; or indicating the terms of its submission. The State cannot, however, while within the Union, rightfully nullify such law of Congress, by the use of any of its powers, however high. For while within the confederacy, it has bound itself by a different rule of supremacy than its own will in reference to acts of Congress.

In ratifying the Constitution, it made all its provisions a part of its own fundamental law, which prescribes that "the Constitution and laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the *supreme law* of the land, and the judges in every State shall be bound thereby, anything in the *constitution* or *laws* of any State to the contrary notwithstanding." (Art. VI. Sec. 2, Con. U. S.)

Congress must necessarily decide in the first instance, whether its enactment is made in pursuance to the Constitution. This it does in passing the law. If it meet the sanction of the executive department as well as the legislative, which it does in its passage, and is also sanctioned by the judiciary (if it be a subject within judicial cognizance), it must be regarded as having undergone all the tests of constitutionality, which have been provided in our system of government, and must therefore, within the purview of our system, be regarded as the "supreme law of the land." As to the State government, it could not contravene or nullify such law, because it is a creature of delegated limited authority, as well as the general government, and no power has been, or could be given to it, to veto a law of Congress, as long as the above quoted provision stands in force. The State in its sovereign capacity could not nullify the law within the Union, and while assuming to act as part and parcel of the system of government, instituted by the Constitution of the United States, because it has reserved to itself no such veto power as part of such system; and because, although sovereignty from its very nature, cannot irrevocably bind itself to one form of government (the right to change it being an inherent, inalienable right of the people), still it can well bind itself, for, and in consideration of the benefits derived from an associated system of government formed by different equal sovereignties, to conform to a rule of supremacy (to wit, the expressed will of the associated sovereignties) variant from its own will, so long as it may remain a part of, and receive the benefits of such associated government.

A cardinal principle of our system of government is the equality of the States, in proportionally and mutually bearing the burdens, and receiving the benefits of the general government. This would be utterly destroyed if a few powerful States could refuse to bear the burdens, while they received the benefits equally with the weaker States that did bear them.

Such has ever been, and ever will be, the wide difference between the several States in their industrial pursuits, habits of life, domestic institutions, political opinions, moral sentiments and prejudices, that the recognition of a veto power in a State as a part of the system would cause it frequently to be acted upon by the States; the effect of which would be to destroy the universal and equal operation of the laws in all the States of the Union; which universality is another equally cardinal principle in our system of government. Perhaps the most prominent reason for the formation of a more perfect union by this Constitution, was to obviate this very difficulty, growing out of the failure of the several States to carry into operation with equal punctuality, the laws of the old confederation. The wise men who framed it, would surely not have omitted to declare and define such a check in the government, if it had been intended to be exercised, as a part of the grand system of government, they were with so much care, wisdom and experience devising. Nullification by the States is to the extent of its operation a destruction of our system of government.

If the aggression upon the rights of the people of a State be made in the shape of a failure of the sister States, or the general government, to perform their constitutional obligations, the matter complained of will, from its nature, be beyond the reach of State power within the Union, except by operating upon public opinion and the ballot-box, by an appeal to the sister States and to the general government, as previously indicated. As this character of aggression may be so flagrant and dangerous, as is now evidenced by the impending crisis, as to lead to the exertion of the highest powers within a State, for the protection of the rights of its people, we may better be prepared for its consideration by taking a broader view of the Constitution than has heretofore been developed.

The Constitution of the United States not only furnishes the structure of a general government, but it does more,—it contains provisions, which are in the nature of treaty-stipulations between the States, to the observance of which they are mutually bound, by being adopted and established by the highest sovereign power of each State. They are more than treaty-stipulations between sovereign States, by being thus made the fundamental law of each. Regarded in this comprehensive aspect (and so it must be regarded for its true spirit and grand purposes to be properly appreciated and understood), the Constitution regulates a whole system of governments, so as to act in concert and harmony with each other, and with the common government, which it institutes for all, with specific limited powers.

These are the obligations assumed by the States, that do not necessarily enter into or pertain to the structure or direct operations of the general government:

“No State shall enter into any treaty, alliance or confederation,

grant letters of marque or reprisal, coin money, emit bills of credit, make anything but gold and silver coin a legal tender, in payment of debts, pass any bill of attainder, ex-post facto law, or law impairing the obligation of contracts, or grant any title of nobility." So they shall not without the consent of Congress lay import duties, etc., duty on tonnage, keep troops or ships of war, or enter into an agreement with another State or with a foreign power, or engage in war unless actually invaded, etc. (S^c. X, Art. 1, Con. U. S.)

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State," etc.

"The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States."

"A person charged in any State with treason, forgery or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

"No person who shall be held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service, or labor, but shall be delivered on claim of the party to whom such service or labor may be due." (Art. IV, Con.)

This will suffice to show the class of provisions referred to. They are of much more binding force than mere treaty stipulations between governments. They are binding upon the State government and every department thereof and upon the officers and citizens, just as is their own State Constitution. It does not require any action of the federal government under them to make them of binding force in each State as its fundamental law. A State could not coin money, even if the federal government failed to do so. A State is bound to deliver up slaves who escape from their masters and enter it, though Congress had passed no law upon the subject, and as much so, as it is bound to do anything else by the terms of its own State Constitution. This duty is generally recognized and acted upon in the case of criminals, who are fugitives from justice, on demand of an executive of a State, without any law of Congress.

These provisions and their faithful observance are exceedingly important to our system of government in two respects, having reference to the diversity of interests, opinions, habits, pursuits, and prejudices which have always existed, and must continue to prevail in the different States of so extended a Union.

1st. That the general government may be allowed to perform those functions of government, which are indispensable to the existence and preservation of a common government for all.

2nd. That the rights of each State which it enjoys under its re-

served powers, however peculiar they may be, in response to the interests, opinions, habits, pursuits or prejudices of its own people, may be respected and accorded to it by the public authorities and citizens of every other State in the Union. Some such regulation as this is absolutely necessary to the friendship and peace of any two independent equal nations that have any intercourse with each other. Between foreign nations, it is secured ordinarily by treaty, or accorded by an enlightened comity. It was well known to the enlightened statesmen, who were the authors of our system, that the strong do not always accord this right fully to the weak, however ready they may be to demand it from others. And to place the States, however great or small, on a perfect equality in the mutual recognition of each other's peculiar rights, they did not leave it to fraternal affection, or an enlarged liberality, to an enlightened comity, or even to agreements or treaty stipulations, afterwards to be made by consent of Congress; but they secured it by the strongest obligations they could devise, the Constitution to be adopted by the sovereign power of each State, and thereby to become the fundamental law of each State.

These provisions are as material parts of the compact as any other, and their reciprocal observance punctually by each State, constitutes a substantial part of the consideration to every other State, upon which it was and is founded. Mr. Madsion, in his letter to Edward Everett in 1830, said, that "when the Constitution was adopted as a whole, it is certain that there were many parts, which if separately proposed, would have been promptly rejected. It is far from impossible, that every part of the Constitution might be rejected by a majority, and yet taken as a whole, be unanimously accepted. Free constitutions will rarely if ever be formed without reciprocal concessions,—*without articles conditioned on, and balancing each other.*" No one can suppose for a moment, that this Constitution would have been adopted by the Southern States, or even by the Middle States, where many slaves were then held, without the provision for the delivery of escaped slaves. Without the adoption of most of these prohibitions upon the States, the Constitution could not have been adopted; such, for instance, as the prohibition to coin money, to make anything but gold and silver a lawful tender, to make treaties, alliances and confederations, to keep troops or ships of war; likewise, also, the obligation to give full faith and credit to records, to deliver criminals, and to grant to the citizens of each State all the privileges and immunities of citizens in the several States. Indeed, the same may be said of many of the provisions, which enter into the structure and powers of the general government itself.

The States should neither violate these obligations by its own action, directly or indirectly, nor should they permit their citizens to violate them within their limits.

But suppose they do? Suppose the Northern States, believing slavery to be a sin and a great social and political evil, and having nursed and cultivated a virulent antipathy towards this institution, should permit a set of fanatics to prowl along the borders of the free States, watching an opportunity to decoy a slave from his master, and have him conveyed, by the aid of his associates and the connivance of the sympathizing community, beyond the reach of his owner; or if the master should pursue his property, an infuriated mob of free negroes and worse white people, rescue the slave and defy the laws of the State and of Congress, and perhaps avail themselves of some imprudence of the indignant and outraged owner, slay him with impunity, and the State permits it, or what is worse, discharges the culprits, after a trial which is made a mockery of justice by the same mob filling the court-house, and making another rescue by the by the force of perjury. But that is not enough, for good men there are in those States, who, whatever may be their moral convictions as to their ownership of such property, will not stand by and see a stranger outraged and robbed, who will not see the laws of their country trampled upon, who regard robbery and murder, and resistance to lawful federal authority, as more heinous offenses than owning and pursuing a fugitive slave. The hands of these good men must be tied so as to let the motley mob execute the higher law of public opinion. To accomplish this, the liberty bill is passed by the States (a number of them at least). That bill, as usually shaped, not only ties the hands of the good men, who would assert and maintain the right, but should the owner escape death from the mob, he makes his claim according to the laws of the United States, under the hazard of being buried alive for many years in the penitentiary, by a prosecution and conviction in the courts of such States. Suppose further, by some such process as this, variant in different States of the North, the Southern people should lose one-half a million to a million of dollars annually, and have their slave property on the borders much diminished in value from its insecurity. It is certain that by such and similar means, the fugitive slave law of Congress, is virtually nullified by the permission and legislative action of the Northern States. In most of them, indeed, this provision of the Constitution, for the delivery of fugitive slaves, is a mere dead letter,—erased from the Constitution by the broad black scrawl, drawn across it by the hand of anti-slavery fanaticism.

Now, suppose in the spirit of retaliation, the people of the Southern States should commit some outrages upon men whom they suspect to be here for some incendiary purpose, and further, the States themselves should pass evasive laws, so devised as to prevent attorneys and agents from collecting Northern debts, or laws to discourage the sale of Northern made goods (which I hope

and trust no one in the South will ever think of seriously, as a remedy for our wrongs).

Suppose that California should establish a mint, and coin her own gold, upon a pretext or evasion. Suppose that Ohio and other States, following her example, should refuse to deliver up fugitives from justice, because they could not recognize any criminality in stealing a negro slave, or some such ground. Let every peculiar interest, opinion or prejudice manifest itself, by similar attempts to evade and defeat the performance of these and other plain constitutional obligations, and our system of government would be virtually disorganized and destroyed. It would be changed, and would have failed to accomplish the objects for which it was intended. It was under a full sense of the calamitous results of such a course that Mr. Webster said, in a speech in Virginia in 1851: "I do not hesitate to say, and repeat, that if the Northern States refuse, willfully and deliberately, to carry into effect that part of the Constitution which requires the restoration of slaves, the South would no longer be bound to observe the compact. A bargain broken on one side is broken on all sides." Nearly ten years have elapsed since that was uttered. During all that time many of the Northern States, if not most of them, have not only passively but actively refused "willfully and deliberately" to carry into effect that provision; or, what is exactly the same thing in substance, judged of by any honest mind that is unbiased by the fury of fanaticism, that very result has been produced by their counter-acting laws and permission, which were intended by them to produce it, and which could have been intended for nothing else. *"The South would no longer be bound to observe the contract. A bargain broken on one side is broken on all sides."* A willful and deliberate violation of the compact by the Northern States would absolve the people of the Southern States from their allegiance to the general government, if they choose to be absolved thereby. It is a standing, continuing violation by the Northern States, put into operation and practically acted on, and ready to be acted on by their citizens and officers, every day in the year, whenever a subject presents itself. It is not a past, but a continuing violation,—looking to the perpetual future. We are not absolved upon a condition that the President will march an army into the field to disperse any mob that may be raised in any spot throughout the whole area of twelve or fifteen Northern States. We are not absolved upon the condition that the Northern people will not encourage such rescuing mobs. There is but one condition in the proposition, and that is, "if the Northern States refuse willfully and deliberately to carry into effect" the provision. It is immaterial about the means they employ. The question is, do they "refuse willfully and deliberately." The subject addresses itself, not immediately through the general government, but directly to

the States themselves. The States are bound by the obligation, and they cannot shelter themselves under the broad cover of the general government.

Such is the verdict upon the action of those Northern States, by the man, who for twenty-five years before he pronounced it, was the great intellectual champion of the Union party, and by them recognized as the greatest constitutional expounder of their principles which America has produced.

The object of calling special attention to this opinion, deliberately expressed, is to show that he placed the States upon their own responsibility in the performance of their constitutional obligations, and that such a violation by them, equally as by the general government, would be destructive of the system of government instituted and regulated by the Constitution of the United States.

Such indeed must be the case. He who regards the Constitution as only instituting a general government, has but half comprehended the grand designs of its formation. It is also our international code, as it may be termed, securing the equality of the States, securing the mutual recognition of each other's reserved rights and peculiar interests, enforcing an enlarged and liberal comity between the States in their internal administrations, enforcing strict justice in rights of action, and rights of property to citizens of different States, in fine, regulating the "balance of power" upon a harmonious fraternity of feelings and interests, which in Europe requires a million of bayonets to adjust.

The States must also be actively co-operative in the execution of this system, in the performance of the constitutional obligations, which rests on them severally, as well as electing officers to administer the general government, so as to put the States in active harmony with one another, and each and all of them in harmony and in active co-operation with the general government. It is not to be a forced co-operation in the system, by the hand of power. It must be voluntary. Upon no other principle can our free governments be administered, which in nearly all their departments, acting on the people, require the citizens to participate in, or directly aid in the administration and execution of the laws of the land. When States, or large sections of country in a State, have to be forced by the military power to the performance of their constitutional obligations, the whole theory of our government will have to be changed, and the sword will be of much higher authority than precedents in law books; and the cannon's roar will be more convincing than the eloquence of statesmen.

Gen. Jackson at the end of a long life, spent in the service of his country, in the most trying positions, all of which, his intellectual power mastered, and who never shrank from the use of power, when he believed it to be right, and whose devotion to the Union is impressed upon every page of his history, and while for the last

time surveying his whole country, which his strong arm had so nobly protected, and his wisdom directed, left his farewell admonition to his countrymen upon the very subject which now convulses the whole country :

“ But the Constitution cannot be maintained, nor the Union preserved in opposition to public feeling, by the mere exertion of the coercive powers confided to the general government. The foundation must be laid in the affections of the people; in the security it gives to life, liberty, character, and property in every quarter of the country, and in the fraternal attachments which the citizens of the several States bear to one another, as members of one political family, mutually contributing to promote the happiness of each other. Hence, the citizens of every State should studiously avoid everything calculated to wound the sensibility, or offend the just pride of the people of other States, and they should frown upon any proceedings in their own borders likely to disturb the tranquility of their political brethren in other portions of the Union.

“ Each State has the unquestionable right to regulate its own internal concerns, according to its own pleasure; and while it does not interfere with the rights of the people of other States, or the rights of the Union, every State must be the sole judge of the measures proper to secure the safety of its citizens, and promote their happiness; and all efforts on the part of the people of other States, to cast odium upon their institutions, and all measures calculated to disturb the rights of property, or to put in jeopardy their peace and internal tranquility, are in direct opposition to the spirit in which the Union was formed, and must endanger its safety.”

The hero and sage of the Hermitage, though resting in his tomb, still speaks to his country the words of wisdom.

This refusal of the Northern States to deliver fugitive slaves, is but a part of a well concerted scheme of continuous aggression, the full development of which is necessary to form a correct estimate of the powers of the State adequate to repel it, and of the mode in which it must be exercised.

The Constitution of the United States is of course not the government. The exercise of the powers delegated by that instrument to the federal authorities, its departments, officers and agents constitute the general government. And while they perform the duties imposed, and exercise just the powers conferred for the objects intended by it, the government in operation under it, is exactly the government which the States contracted for, and bound themselves to submit to when they formed it. It was contemplated in its formation, that the march of civilization would make such changes in the habits, interests and wants of society, as to demand a change in the actual government. Hence provision was made to effect such change by amendments to the Constitution, so as to increase, modify or diminish the powers to be exercised, and duties

to be performed by the federal authorities. Such change, however, can only be made by the consent of "the legislatures of three-fourths of the States, or by conventions in three-fourths thereof." That is, the change can only be made by the ascertained will and consent of the people of each State, to the number of three-fourths of the whole.

Out of the thirty-three States, twenty-five States, irrespective of the aggregate amount of population, must agree to the change before those States, that dissent from it, are bound to submit to it, whatever may be the demands of public opinion throughout the Union as to the propriety or necessity for the change.

Now, majorities in one more than half the States (seventeen), may control every department of the actual government which is administered under the Constitution. A much less number than half, from the numerical strength of their population may control the executive department, and the House of Representatives in Congress, and thereby hold the whole government in check and infuse an influence in the actual government which is administered in accordance with the will of such controlling States. The check is itself an influence infused into the government, by preventing action unless it shall be shaped to suit the checking power. And each department, particularly the executive, must infuse a positive influence into the government by the exertion, and the mode of exertion of its powers, which are not subject to be controlled or checked by any other department. Thus it is obvious, that the governing powers,—the majorities that control the part or the whole, which gives shape to the actual government, may be very variant from the changing power,—the majorities that are required to amend the Constitution.

This presents a peculiarity in our government. In Great Britain the law-making power resides in the same bodies, the three estates of the realm, that can by a concurrence, amend the Constitution. Its government can therefore keep pace with the concurrent will of the three estates, the queen, lords and commons. This provision is intended to secure our government from the frequent changes which great excitement, or fluctuating public opinion upon new questions might produce, and also to cause respect for the interests and wishes of a respectable minority, that might be unwilling to make such a change. It is admitted that the powers and objects of the general government are limited. There is no power delegated to the general government or any department thereof, to destroy or even to discourage slavery. On the contrary, it is recognized in the Constitution, by the representation given to the States for their slaves, by the provision obligating the States to return fugitive slaves, and by the provision which restricts Congress before 1808 from passing any law against the importation of more

slaves. Without these provisions the Constitution would not have been assented to by many of the States.

In the progress of events, new objects and new views of governmental action present themselves, which are sought to be adopted by the governing majorities that control the government, but which are not adopted by the greater number of majorities, that are required to change the Constitution. This produces a conflict between the governing majorities that wish to advance, and the minority that has a right to hold them back, and prevent any change in the actual government. There has always been a tendency in the governing majorities to adopt a liberal construction as to the powers delegated, in order to make the general government keep pace with, what they considered, the true interest and policy of the country. This induces a continual effort to find powers in the Constitution, that are in fact, not expressed, and were never intended to be delegated. By this means the powers of the government are sought to be enlarged, and the government is perverted, by being made the instrument directly and indirectly of accomplishing favorite objects, not at all embraced within its scope of constitutional action. This is a change of the government. But it is a change without the consent of a majority in two-thirds of the States, and therefore unconstitutional. It is a change by the infusion of extraneous elements of action into the government, through the perversion of its powers, or through the usurpation of additional powers not granted. It is a change under the forms of administering the government. It is the government itself making a revolution without the consent of the States, that alone have the right to revolutionize. If the change should materially prejudice or jeopardize their rights, not having contracted for such a government, they are not bound to submit to it; for the general government has no right to exercise those that have been delegated, in a manner and with a design to accomplish an object not embraced within the intended scope of the government.

The preponderance of Northern mind has been predisposed thus to enlarge the powers and objects of the general government. Hence federalism of which this is the essence, though often beaten back, as often renews its form of development, and seeks to engraft itself upon the government, and now more than ever, bold, triumphant, and arrogant demands its admission into the government.

The preponderance of Southern mind, has resisted this usurpation and perversion of government. Massachusetts, the mother of Northern States, and author of their leading ideas, is the type of the former principle; and Virginia, the mother of Southern States, and author of their leading ideas, is the type of the latter. Heretofore this federal principle has advanced the claims of measures and objects, which admitted a division of opinion both in the

North and South. At last it has found an object, which fastens itself upon the great mass of Northern mind, and is being infused as an element of action, into the government. That element is the *universal freedom of man*, without distinction of color. When the Constitution was adopted, all the States had slaves, with one or two exceptions. Hence the provisions before referred to were inserted, to permit the States to acquire more slaves, and to protect their property in slaves, and to require every State to respect such rights of property. More than half the States since that time have become opposed to the whole institution of slavery; still not enough of them to change the powers and objects of the government by a regular change of the Constitution. The controlling majorities in the Northern States have determined to change the government on this subject, at all hazards, by construction, perversion and evasion of its powers, so as to discourage and destroy slavery, rather than protect it. Their acts and words concurring, establish this plainly.

The object of a platform is to indicate and avow the principles upon which the party agree to administer the government.

The leading principle thus avowed by the Republican party is in the following language to-wit:

"Resolved, That the maintenance of the Federal Constitution is essential to the preservation of our republican institutions, and shall be preserved; that we solemnly re-assert the self-evident truths, that all are endowed by their creator with certain inalienable rights, among which, are those of life, liberty and the pursuit of happiness; that governments are instituted among men to secure the enjoyment of those rights."

Here is the great object avowed—*universal freedom*—and the instrument of its accomplishment—*governments*, which they have been and are now with rapid strides converting to their purpose, both State and Federal. This is not intended as the assertion of a fascinating abstraction. For they "deny the authority of Congress, of a territorial Legislature, or of any individuals to give legal existence to slavery in any territory of the United States." They also condemn the action of the present administration, "in construing the personal relation between master and servant, to involve an unqualified property in persons," etc., "in its attempts at the enforcement everywhere on land and sea, through the intervention of Congress and the Federal Courts of the extreme pretensions of a purely local interest."

The doctrine upon which they plant themselves is, that there is to be no recognition of the right of slavery, except within the limits of the slave States. They simply deny themselves the right now to make a direct assault upon slavery within the slave States. All other means of attack is to open to them in attaining their ultimate object of universal freedom, through the instrumentality

of the power and influence of the State governments North, and of the Federal government. They now deny themselves the right to pass a law in Congress abolishing slavery in the States, but claim the right to use the governments they may be able to control or influence, as instruments of every sort of indirect attack for its ultimate extinction within those States.

Why announce this principle of universal freedom, in reference to the contemplated action of the government upon the persons who belong to the Northern States? No one there is controverting it in its application to those States, nor are we. It can have no application but in reference to the slaves of Southern masters. It points out two things distinctly, to-wit: the direction they will give to all governments and departments thereof, which they may be able to control, in an indirect attack upon slavery within the States, and the basis upon which the government shall rest, when they shall have accomplished their ultimate object. The very best evidence that we can have of the purpose that actuates men, is what they themselves declare, and what they have done and are doing in correspondence with such declarations. If that test be applied, there can be no doubt as to what is their purpose, in getting possession of, and in controlling their State governments, and the Federal government. To exhibit their whole scheme of operations,—let us suppose it were proposed by a man from the North, in a convention of all the States now assembled, to propose amendments to the Constitution, that slavery should be put upon a sure basis of gradual extinction; that the means used should not be by the passage of a law of Congress abolishing it, but by a non-delivery of fugitive slaves,—by its exclusion from all the territories, by the general recognition of universal freedom (except only within the slave States), by the refusal of governors in the free States to deliver up negro thieves, upon the ground that stealing a man, could not be regarded as an offence,—man not being a subject of property; by the use of the patronage and influence of the Executive of the Federal government, and when practicable, of all its departments, to discriminate against slave labor, and the ownership of slaves,—by protecting a free press and free speech, so as to foment agitation, discord and division in the slave States, and intensify the feeling of hostility to slavery in the Northern States; by sending ministers abroad to array the public sentiment of the world against the institution; by giving a premium to free labor in manufactures and mechanic arts (which mainly exist at the North), and to the capital that employs it, through the operation of a specific protective tariff; by manifesting the public disapprobation of the government in preventing the slave traffic in the District of Columbia, under the penalty of setting the slave free, if brought there and sold—which, when safe to do it, involves the right to abolish slavery in that district; by the States incorporating emi-

gration aid societies, to direct the redundant population of the Eastern and Northern States into the border slave States; by agitating the question until all the departments of the Federal government are enlisted in the cause, so as to adopt such measures from time to time as may be pressed without a rupture, so as to keep the slave owner perpetually alarmed for the safety of his property. All these efforts must be directed towards the driving in the borders of slavery from State to State, until it shall be hemmed into a small compass upon the Gulf and Atlantic, where it will destroy itself. Then the final object will have been attained and a homogeneous population be spread throughout the whole Union, upon the basis of universal freedom. (It cannot be doubted that such is the plan of operations and designs of the Black Republican party.)

Would the Southern States entertain such a proposition? Would they not say that "you propose to put our own government in direct antagonism to the rights of the South, and make it an instrument of destruction, and thereby subvert the objects of government, which is to protect not to destroy the rights of its citizens; you propose to give money, as a premium to the labor of the North of a particular class, and add to the capital that employs it, which is not protecting property, but giving it without any consideration out of means unjustly taken from others.

In other words, you subvert the very object of government, which is to protect rights,—not either to donate them gratuitously to one section,—or to destroy them in another. You propose to strike one clause entirely out of the Constitution, which is important for the protection of our rights, the delivery of fugitive slaves. You propose to give the right to abolish slavery in the District of Columbia." It is useless to enumerate further. For it is too obvious that such measures would produce a change in the government, thoroughly radical in reference to the domestic institutions of the Southern States, and infuse an element of action, that its founders never thought of being embraced in it, and which would not be assented to, if now proposed, by a single Southern State. In the effort to attain the unconstitutional object, the change of the domestic institutions of the States, the General Government would itself be changed, through the governing majorities of a little over half the States, and not by the consent of three-fourths of them. It would be changed by flagrant and dangerous perversions of its powers to objects not intended, and by an usurpation of powers not granted. The whole system instituted by the Constitution would be disorganized and perverted, by the States failing to perform their constitutional obligations, and by using their powers to attack and endanger the rights of sister States.

Why then wait for an overt act after Lincoln is inaugurated? These are palpable, deliberate and dangerous violations of the

Constitution, Some of which have already been done and are being done, and the rest certainly contemplated and intended.—They are not violations waived by acquiescence. They are subsisting, continuing, progressing, and increasing violations. The election of Lincoln shows that they are sanctioned and affirmed, and thereby shown to be the deliberate will of the controlling majorities in the Northern States. By his election under the avowed principles of his party, the whole attitude of the Northern States, impressed upon them by that ruling party, is an overt act; an array of the powers of their States, and of the Federal Executive and of the checking influence within the general government itself, against our constitutional, and reserved rights, in reference to slaves and slavery. This overt act is evidenced, not by two witnesses, but by the million, or perhaps millions of voters in the late election. The intention, only not treasonable because manifested by the controlling majorities under the forms of the Constitution, is openly avowed by all the leaders of the conspiracy, and needs not to be proved by inference from their acts.

Overt act by a direct attack upon slavery in the States! Who expects it? They do themselves disclaim it. That is not the way of the battle. Their whole scheme of battle is a siege,—a protracted siege. It is a siege for years to come. They have gained nearly all the positions they want or need. Let them retain them, and get well fortified in them, and they will environ us with their easy leisure. Our defeat will be a matter of time only. Are those who are waiting for the overt act, looking out for the storming party to advance? It will not come shortly. It will never come until we are shut in on all sides, worn down, dispirited, divided and not able to resist.—Then will it come to win an easy victory. But even in that dreadful day, if come it must, I expect to see some brave spirits stand upon the outer wall, and fall as freemen, rather than see the black flag of fanaticism waving triumphantly over their beloved South.

The virtual refusal of many of the Northern States to deliver fugitive slaves in pursuance of their constitutional obligation, and of a law of Congress, which they have in effect nullified all over the North, either by the unrestrained action of the people, or by State enactments, is itself a dangerous violation of the compact, which must result in driving in the borders of slavery while the hostility is kept up. The exclusion of slavery from Kansas, and their readiness to do so from any other territory by State action, in incorporating emigration aid societies, and thereby organizing capital and individual enterprise in the accomplishment of a political object, injurious to the people of the Southern States, and devised for their exclusion, is an outrage upon the spirit of the compact; which enjoins comity, fraternity and equality among the States. The infusion of the free-soil element into the general government, by abolishing

the slave traffic in the District of Columbia, instead of regulating the traffic within the city of Washington, as a mere police arrangement, and also by the election of a Speaker of the Lower House, with the influence that it gives in influencing the action of Congress and the public opinion of the country, is to the extent of their operation a perversion of the government to an object not intended to be within its scope.

These things with others that might be named, might be borne with while there was hope of a returning sense of justice rectifying the wrong. But they are parts of the scheme, and the late election is an authoritative sanction of them, by their controlling majorities, and it is much more, it is what they knew to be a hazardous forced march, to reach the main central point in their scheme of operations, possession of the executive arm of the government, with all its power, patronage and influence—which, if maintained, will enable them to gradually put in operation their whole scheme, without any further shock upon the body politic, and insure its progress and ultimate consummation.

To properly appreciate the danger we are in from this—the turning point of the project of invasion, it must be recollected that the present crisis involves not only these political questions upon which the revolution of both the Federal and our Southern State governments depend, but also religious, social and industrial questions, which cluster around, and are connected with them, tending to increase their force, and to insure their durability.

European society, since the extinction of villenage and serfdom, has assumed and rests upon the basis, that every person of lawful age must provide for himself, and the liberty and the means of doing it are controlled by the few,—the governing class. Society, in the Northern States, has made an advance upon this, and has for its basis, that every person of lawful age must provide for himself (and family), and that the liberty and means of doing so are controlled by the great mass of male citizens of lawful age; and in those States where free-negro suffrage is allowed, the point has been reached, to which they are all in theory tending, that all men are free and politically equal. Whereas Southern society is based on this same principle as to the white race, but as to the black race, some one is required by law to provide for them, and own them as slaves, and that they are neither free, nor have any controlling power in our States. This difference lies at the foundation, and is the leading cause of the difference in the two orders of civilization prevailing at the North, and at the South; and which is fast tending to make, if it has not already made us so antagonistic in principle, as to render it difficult, if not impossible, to maintain even a federative connection. It has arrayed the North against the South. This difficulty is not of our seeking, and there is no necessity for it. It is forced upon us by the controlling ma-

majorities, now becoming overwhelming, and by the propagationist spirit, which has become a part of their national character, and is impelling them in the effort to spread their order of civilization eventually, throughout the whole country. In the township division of the North, is exhibited in miniature, the fundamental elements which form Northern civilization.—There, they have the school-house, the church, the farm, the store-house, the work-shop, the township meeting for police and government, and in some places the ship. Each interest struggles to elevate itself; and each is discussed by all, and the activity of each in harmony with the others, elevates each and all together, embracing education, religion, morals, labor, commerce, manufacture, shipping government, and all others. From the township it ascends to the county, to State, and to the whole Northern section; throughout which the press, the pulpit, lectures and speeches are the great medium of active communication, and reciprocal interchange of opinions, and of the establishment of leading ideas in common throughout the country. Those leading ideas, being in harmony with each other, and continually acting and re-acting on each other, intensify each and all, to a degree rarely ever found in any other country. And there is a continual tendency of all the leading ideas, thus generated and intensified, to pass up from the religious, moral, social, industrial and commercial sphere in which they originate; into the political, and to impress themselves upon the government of our country. Their preachers have been leaders in all the political excitements, from the day of Cotton Mather, to the present time, and this practice has given great prominence to political measures, which involved moral or religious questions. All this is signally displayed in the rise, progress and political adoption of the anti-slavery sentiment of the North. The figures representing the strength of this party, in the different elections for President since 1840, is well calculated to deceive, as to the original formation, and character of the present Black Republican party.

They stand thus:

1840—votes, 7,000—Birney.

1844— “ 62,140— “

1848— “ 296,232—Van Buren and Gerrit Smith.

1852— “ 157,296—Hale.

1856— 1,341,812—(127 electors) Fremont.

1860— enough to elect—Lincoln.

Was this gain an accumulative increase by the conversion of individuals to the principle from time to time? By no means. The great substratum of moral sentiment throughout the whole North fifty years ago, was the conviction that African slavery was a sin—a moral, social and political evil. For some time it remained, except in occasional outbursts, a moral and religious question. By the Northern process of intensifying their favorite ideas, it by de-

grees became inflamed into a burning enthusiasm, that struggled to exhibit itself into political action. The political parties repressed it with a strong hand, and long kept its agitation down within the religious and moral sphere. It brought to its aid a whole cluster of associated ideas, and where one failed another was sure to plead its cause. These were universal freedom, political equality, respectability of labor, a cultivated sentiment of humanity, the missionary feeling which prompted the desire to spread free labor, and Northern institutions over the continent, political and sectional jealousy, and various others of less consequence. Aided by all these, the excitement became active and wide-spread. It struggled as a volcano, seeking a vent for its pent up fires. In a remote region of Ohio, where the appliances of political party management were weakest, and where men were free to put their moral convictions into action, it burst forth and sent Joshua Giddings into Congress, a fit representative of the great substratum of moral sentiment, to proclaim its advent into the political arena at the capitol. So in other parts it broke through the pressure and sent a Wade, a Chase, a Hale and others. No rebuke, no abuse, no party training could repress it, no threats intimidate, no ridicule abate its ardor. It marched on with its intensity increased by every opposition. Cast down prostrate, it arose with ten-fold strength. Smothered in one place, it blazed forth in an hundred other places. One by one it took possession of their State governments. It is filling up Congress with members approaching to majorities in both houses. Twice has it elected a speaker of the lower house, with an apparent minority. It has scattered and broken to pieces, or swallowed up all other political parties.

Perhaps as long as twenty years ago, Joshua Giddings told us that he was the true representative of the mass of Northern sentiment, and that the people would speak out. He has lived to see his words verified by the outbursts all over the North, which now makes Lincoln President. Having conquered all opposition at home, it will now find fields abroad to conquer. It can now gather up its strength, and throw its whole force against the only point of antagonism that resists the spread of Northern civilization over all the States. This is no new principle, just being espoused by a party in the North. It is old, and the only thing new about it is, in raising it from the moral and religious to a political sphere of action, in getting the consent of the ruling majorities to use the governments, State and Federal, as instruments in aid of Northern public opinion, to besiege slavery, and gradually beat it back from State to State, until Northern civilization shall be spread over the Southern, as well as over the Northern States.

The ordinary means of seeking a remedy for infractions of the Constitution, where the people of different sections are divided

upon the questions involved, are now wholly unavailing. We have no means of reaching sister States that nullify the laws of Congress, or the majorities of the section that control the executive arm of the Federal government, and which will eventually (if not checked) control all its departments. From the very nature of the attack upon our constitutional and reserved rights, we have no remedy but for State to address State through its sovereign power, and demand a return to the compact, as a condition of future union.

If we cannot protect our rights within the Union from the aggressions of the controlling Northern majorities attacking them, through the general government, through their State governments and through the unlawful conduct of their citizens, under the influence of vitiated public opinion, we may rightfully withdraw from the Union to protect them. *Otherwise the States have no reserved rights.* Rights of a State are not and cannot be reserved, which may be controlled or taken away by majorities in other States against the will of the whole people of such State. This is too plain for argument.

The only hope for saving the Union is for the Southern States to act promptly, and act together, in such way as to present the alternative to those Northern majorities, requiring them to choose between anti-slavery and the Union.

They cannot have both. We might thereby enable the valiant friends of the Constitution at the North to beat back this fanatical domination, and destroy it forever. Mere party promises will not avail us. They may be just as fair as the bow of promise that spans the heavens, and yet just as unsubstantial. What we have to do now is with the people of the Northern States in their sovereign capacity. A radical change of purpose towards us, so manifested, is the only thing that will secure our safety in the Union any longer. If this cannot be obtained, the Southern States must leave the Union, if they intend to remain free. The Southern States have not for ten years past been able to maintain their rights against the aggressions of this party acting in and through the Northern States, while the federal government, in all of its departments, Executive, Legislative and Judicial, were in our favor.

What are we to expect, when the general government is used to assist, and not as heretofore to oppose their efforts against us? Can a free people permanently submit to a government possessed and used for the avowed purpose of circumventing, undermining and ultimately destroying their vital interests, by the known and declared enemies of their domestic institutions? Must we live under a government that we look upon as an unrelenting enemy and still be free? It is impossible. If the Northern mind is fixed in its anti-slavery purpose, as I fear it is, then the point of antagonism has been reached, that makes us two people, and a paper

Union is no Union at all. The two sections might now receive benefit from the wise example of Abraham and Lot, and part in peace, if they can no longer live in harmony.

The question is sometimes asked, can the Southern States protect their rights against this aggressive assault, out of the Union any better than in it. Admit that we cannot, are freemen to submit to the perpetual degradation of inequality, let the consequences be what they may? Has a nation, a people, a State, no spirit to be outraged, or is it a collection of pelf and animal life? But then we can protect ourselves. The Southern States have all the elements of national strength in a brave people, intelligence, wealth, extent of country, soil, climate and labor. Out of the Union we would cease paying a heavy tribute, which we have always paid uncomplainingly, to Northern labor, capital and enterprise, as an incidental advantage, which they have derived from the operation of the general government; while our great interests have received little or no incidental advantages from it. I refer to the millions paid to Northern labor, capital and enterprise, in their monopoly of our foreign commerce, in our coast-wise trade, and navigation and shipping interests; in their fish-bounty in their inventions and book making; in their manufactures and mechanic arts of all sorts, incidentally protected by a tariff that raises from sixty to eighty millions of dollars revenue; in their government contracts for fortifications, ships of war, navy and army supplies, or the like.

But further, this fanatical sentiment of the North will not continue its aggressions upon us if we are a separate nation,—because the Northern people will not feel themselves responsible for what they now regard as the sin of slavery. Other political questions, pertaining to their own interest, will divide and occupy their attention, and this one will become obsolete for want of an object to operate upon, and parties can no longer be arrayed upon it. The excessive cultivation of a class of ideas such as the respectability of labor, labor deserves its wages, capital *must* employ and pay labor, will give them employment, terrible employment, at home, sooner or later. They will be interested in maintaining amity with us for trade and exchange, which they cannot expect to do if the aggression continues. We have nothing to fear from the moral sentiment of the civilized world upon this subject. The reaction has already commenced. The cooley trade proves it. Besides that, Spain maintains slavery in Cuba, and Brazil maintains slavery. Russia has millions of serfs, white people in bondage. Our cotton, tobacco and other staples will cause friendly relations with us to be sought throughout all Western Europe. So that if we are driven out of the Union to secure the preservation of our rights against this arrogant revolutionary party, I have no fears that the South will not maintain its rights, and secure its prosperity.

I trust that Texas, before the fourth of March next, will have assembled her wisdom, taken her position, and be in readiness to co-operate with her sister Southern States, whether it be in or out of the Union.

It has been suggested that an effort is being made to hold an election in Texas for delegates to a convention, on the 8th of January, next. I hope that it will be done. That is an appropriate day for it.

Texans may cast their votes on that day, inspired by the brilliant achievement that made it memorable:—Southern valor driving back the enemy that dared to invade Southern soil.

A LECTURE.

UPON THE RIGHT OF SOVEREIGNTY; ITS LOCATION, AND USES, IN THE
DIFFERENT AMERICAN GOVERNMENTS.

[It was first delivered as a public lecture, in the University of Texas, and afterwards, by request of a number of citizens, it was repeated to an audience in the capitol of the State.]

IN THE CAPITOL.

FELLOW CITIZENS—I have prepared this lecture with no desire of raising a political issue, nor with any expectation of its having any influence in political action at the present time. In doing it I have sought to present, in condensed shape, the facts of history upon which the right of sovereignty was based, according to the opinion of the people in eleven Southern States, under which they seceded from the Union in 1860 and 1861.

The subject has not been one of public discussion for the last twenty years past. It is due from those who were participants in the great events of that period, to furnish information to the young men of the present generation, from which they may conclude that the right was assumed in good conscience on the part of those who were the actors in it.

To contribute my mite in doing that, and that alone, is my purpose in this lecture.

The professors of the University, every fortnight during the session, have a public lecture delivered by one of them, in the University, upon such subject as he may select.

Having in my turn delivered this lecture, and some persons in the city, who were not present, having expressed a desire to hear it, I have consented to repeat it here. And now I must crave your patience in hearing it. As the mariner on a long voyage may have to stop at ports of no great interest on the way, still they may be necessary to be passed in the route to reach the port of destination. So it may be found in this lecture, that facts of history that may not be of great importance intrinsically, are referred to, which are still necessary to reach the final result.

In every independent State or Nation that has a settled constitution, written or unwritten, there must be a sovereign power. The American doctrine is, that it exists and abides with the people,

and that they have delegated certain powers, by which the federal government is created and carried on, and a state government is established and carried on in each of the States. The delegation of the power to establish and carry on a government, does not detract from or diminish the entirety of sovereignty still abiding with the people. Our governments, therefore, do not exercise sovereign powers. The people only exercise sovereign powers, in the formation and adoption of their constitutions. In and by those constitutions, they delegate to certain persons, with the required qualifications, legislative, executive and judicial powers of government. The power to vote even is a delegated power, granted to persons having the requisite qualifications, as prescribed in the constitutions. It is not by his being a unit in the sovereignty, that he exercises the elective franchise; for on that principle, women and minors would vote, as they constitute parts of the sovereignty,—the people.

These American governments, as they existed at different periods, in their foundation, structure and mode of action, are *sui generis*, different from all other governments, ancient or modern. The language used in reference to them and to their action, should be indicative of their peculiar organization, and of the distinctive character of the powers exercised by them. Unfortunately, very often that has not been the case, with law writers, commentators, eminent judges, and great statesmen. This is exhibited in such expressions as the following, to-wit: "The government of the United States was erected by the free voice of the people of America for their common defense and general welfare." "It is clothed with the principal attributes of political sovereignty" "The association of the American people into one body politic took place while they were colonies of the British empire." . . .

"By the Declaration of Independence the colonies were made independent States, as declared by the Congress." "The power of making laws is the supreme power in a State." "The Continental Congress assumed and exercised sovereign powers, and was a revolutionary government, acquiesced in by the colonies."

In speaking of our system of federal and state governments, it is represented as the "unity of nationality, and yet diversity of nationality." "An indestructible Union, composed of indestructible States." "The States, though declared to be sovereign and independent, were never so in their individual character." "The powers of sovereignty are divided between the government of the Union and those of the States. They are each sovereign with reference to the objects committed to it." "The residuum of of sovereignty is deposited by the Constitution in the States." The Constitution in the States "was the creation of the people of the country, acting as such in the exercise of their high prerogative as a nation." "The Constitution was a creation of the whole people

of the United States in their aggregate collective capacity, as the one people of one nation or state." "The present government of the United States is the representation of the national government, that always existed over the American people in some shape." The acts of Congress, and of the Legislatures of the States are spoken of as the exercise of sovereign powers. It is said that practically sovereignty is vested in the voters. These expressions, extracted from the writings of Marshall, Storey, Kent, Wharton, Cooley, and others, represent conclusions drawn from the facts of history, and from provisions in the constitutions, federal and state, and from views entertained of the nature of the preceding governments. They are for the most part theoretical generalities, not calculated to convey definite ideas to the enquiring student of American governments. Those who use such expressions, assume that the people in mass of all the States was the sovereign power that created the Constitution of the United States, and that they thereby erected a consolidated government, and not a federation, as it certainly was previously. My purpose is to show that it created a federative government by a compact between sovereign States, without diminishing or destroying the separate and distinctive sovereignty of any one or all of the States; that it is shown to be federative by the independent States adopting it as parties to it; by the antecedent and contemporaneous facts leading to its adoption; by its organic structure, mode of action and amendment, and by its being a creature of delegated, limited powers, dependent on the States for its perpetuation. The subject of sovereignty has been selected as a theme, a proper discussion of which, will lead to the developemnt of more definite ideas in regard to the history and nature of our governments. What will be said will be in the spirit of philosophic investigation, and not in that of partisan political bias.

In treating of the subject of political sovereignty, the first requirement is, to understand its nature, how it is created, and how it acts, and may be acted on.

The sovereignty of the whole earth theoretically is vested in each one equally of all mankind. It is not practical for them to exercise it, otherwise than in associations of people, bound together by common ties, located in certain territories of the earth. Sovereignty is the right which a certain person has, or which persons, few or many have to control all the individuals in any one such association, and all of the objects, capable of being controlled, within the territory occupied by them.

It is controlled by no law or mode of action foreign to itself. It is a law unto itself. It is created or acquired by assumption, which may be by one person, by a few, or by many persons. The acquiescence by all may be either voluntary or forced. The right may be assumed after the consent given, as in a *plebecite* in France.

The mode is various, and is not natural, so that there is an assumption of the right, and an acquiescence in the assumption. A person having the right may govern directly, and in person, or he may depute the power to govern to others, with or without rules for governing having been prescribed beforehand. More persons than one having conjointly the right, may prescribe rules, and appoint persons as their agents to execute them. The mass of the people, having the right may personally by joint action prescribe rules of action, or they may depute the power to particular persons to do it, and to others to execute them. This sovereign right must exist in a person or persons of flesh and blood and mind, and not in an ideal creation to which a name is given for convenience in expression. This may be illustrated approximately by a corporation aggregate. In its creation certain persons by name, called corporators, are granted certain powers to act in a certain way with reference to certain objects, and the combination of the persons thus formed is called an artificial person. That is not an entity,—a real thing, but merely an invented name to designate the organized combination of persons clothed with the powers of action granted to them. The right to act was not granted to this ideal person, but to the real persons named in the charter of incorporation, and to their successors, when organized for action in the mode prescribed. So the right of sovereignty does not exist in any mere ideal thing called sovereignty, but in a real person or in persons; and so the powers of government do not exist in some ideal thing called government, but in persons in whom they are invested, when acting in such mode of organization, or otherwise as may have been prescribed for them. Ours is not a government of constitutions and laws, as is sometimes said, but a government of men, to whom the powers of governing in accordance with the constitution and Laws, have been granted by the sovereign power. Sovereignty must be a unit in its action. It may be existent in different persons, or bodies of persons, composing it. When they exercise the right, it is by their united co-operation, in the accomplishment of any one object.

If two persons were to assume the right of sovereignty over an organized association of people, and each one of them was to act according to his own discretion, independently of the other, neither one would be sovereign. The result would be anarchy, or continual conflict. If they were to divide between themselves the objects of government, which each should have the absolute right of controlling separately, in the government of the people of the association, then practically both could not be equally sovereign. Because the various objects of government are so intertwined, related to, and dependent upon each other, that no such division can be made, as could or would fix a certainly defined boundary in the objects, upon which each one of the persons should have an ex-

clusive province in his separate action. And it would be totally impracticable for each person to be equally and absolutely sovereign over the objects allotted to him, if one of them was given, or assumed and exercised the right to determine the extent of his powers of action.

A person or persons, having the right of sovereignty, may delegate to different persons different powers of government, embracing different objects for the delegated powers to be exercised upon, without any continuous disharmony, or permanent conflict, because the sovereign right, not being impaired or diminished, by the delegation of governmental powers, stands ready at discretion to check or confine the delegated powers, conferred on the different persons, or bodies of persons, within the sphere of action assigned to them; just as a principal, having a great diversity of business, in the management of his private affairs, may appoint different agents to transact different parts of it, under powers of attorney given to each of them, the abuse or usurpation of unauthorized power by any of his agents may be checked, or corrected by the principal. But if the different agents were given general and indefinite powers, embracing the same objects in part, and set adrift, without the control of the principal, to engage in a scramble for the extension of their powers, by direct or indirect action, it would be an accident if some one agent, having the greatest force of character and influence, did not usurp the powers of the others, and place them in a subordinate position in the discharge of their powers.

The distinction must be kept in mind between the right of sovereignty, existing and abiding in certain persons, and the powers of government granted by them to some part of themselves, or to other persons, who constitute no part of the sovereignty. This may be illustrated by reference to the system of government in England. There the right of sovereignty exists in "the three estates of the realm," to-wit: in the persons, who may for the time be the king, and those who may compose the House of Peers and House of Commons,—each estate being created, and acting according to its own mode of existence and of action, separately; and all concurring in their action upon any one object to be accomplished, or principle in government to be established. Thus their concurrent action constitutes a combined unit in an act of sovereignty by them.

The king by immemorial custom, which is tantamount to a grant of power by the sovereignty, exercises powers of government separately, which however may be changed or even taken away from him entirely, by the united action of those constituting the sovereignty. Some of these powers of government are the execution of the laws, by commissioned officers to perform duties under the laws, to grant to persons the vacant unappropriated domain of

the empire, and to grant charters of incorporation, such as were granted to the persons who established the American colonies, and corporations, and franchises of various kinds. The power to execute the laws carries with it from necessity the delegation of the power to judges to administer the laws in the several courts. All such powers granted to the king, and through him to others, are governmental and not sovereign powers, that may be altered or abrogated by the sovereign power, according to its discretion.

The right of sovereignty of a people may be annihilated by force, as in the case of Poland, and also in that of Southern States, after the late civil war. It may also be merged with another, as in the case of Scotland, by the union with England, or gradually lost by submission to the aggressions of some other power.

The origin of the leading characteristics of most states or nations may be traced back to an early period of their existence, however much they may have been changed in the manner of being exhibited by the intervening circumstances, attending their progress through time. Much that distinguishes England of to-day in her love of freedom at home, and in her conquest for profit abroad, by sea and on land, may be traced back to the three little tribes on the continent, the Anglaise, Saxons and Jutes, that forcibly took possession of her territory. Though Mexico has had a republican form of government, patterned in a degree after that of the United States of the North, for more than sixty years, its most prominent feature now is the centralism, impressed upon it by the royalty, while a part of the Spanish dominions.

So with the States of our Union, all of whose leading characteristics, as governments, originated from the charter-governments of the colonies, while they were under the sovereignty of Great Britain, which existed over them, from their first settlement, until after the commencement of hostilities in 1775.

Our federal government had its origin in the union of some of the colonies in 1643, 1690 and 1754, for co-operation in defense against the Indians and French, and afterwards when co-operation was sought to obtain relief from the imposition of taxes upon them by the mother country, in the Congresses of 1765, 1774-5-6, and in each year thereafter until and after the formation of the Federation by the Articles of Confederation. All this was only a co-operation by and as distinct governments, acting together for some common object, and was never a political union of their people in one association of government. At every stage in this progression, the principle of representation, either in co-operation or in governmental action was adopted and practiced.

The expression in the 10th amendment to the Constitution of the United States, that, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," in its neces-

sary implication, that the powers, that had been granted to the government of the United States by the States, were only delegated powers, and was nothing new, then brought to view, in giving shape to the government created by the Constitution. It, in substance, was as old as the first colonial charter that was granted, and gave shape and character to every agency and government, that had acted for the American people in their public affairs. It was the theory of English government, that the vacant unappropriated lands, within the domains of the empire, belonged to the king,—subject to be granted to persons by him, in his official capacity, but as one of the estates of the realm, holding and granting them for and on behalf of the government of which he was the instrument, in his royal capacity. On the same principle he granted charters of incorporation to persons. This, however, was not an irrevocable act of sovereignty. For the parliament, composed of king, lords and commons, by their concurrent action as matter of right and power could change, repeal, or annul any charter that might have been granted by the king. The English government claimed them as “crown lands,” by right of discovery. This proprietorship of the lands was given to them, to enable them to convey, and settle colonists within their respective grants of territory,—thereby accomplishing an object of public benefit to England, in the extension of its dominions, and the increase of its commerce.

These colonial charters provided for some sort of representative body, to whom was delegated the power to enact, and have executed such laws for the local government of the colonists, as were suitable to their condition and wants, conforming therein as nearly as practicable to the laws of England. In the course of time these colonial governments assumed the shape of local self-supporting governments, composed of a legislative assembly, elected by qualified voters, and a governor, appointed by or through the king's royal authority, and a local judiciary, and other officers to carry on the governments. In this condition they were generally found, when the dispute arose between them and the English government, on the subject of taxing America, by the English Parliament. During all this time, through the full period of a century, neither the people, nor their officers, administering their governments, possessed the right of sovereignty. The people in the election of their officers, and the officers in the exercise of their duties, all acted under powers delegated to them to carry on the local governments, that had been granted by the sovereign power in England through the king by charters. England was generally satisfied with the benefit of a monopoly of the colonial trade, established by the navigation laws, and the creation of a board of trade, to effectually carry them out. The great expense incurred in the Indian and French war in America, previous to 1765, induced the parliament to deem it proper to levy a tax upon certain

articles, imported into the colonies, to be collected and applied, not to the support of the colonial governments, but to be kept and used as general revenue in the English treasury.

It was this tax, that the colonies objected to. To remonstrate against it, their legislative assemblies appointed commissioners or delegates to meet together, and act as a body, in making their remonstrance. The assemblage of persons thus convened was called a Congress. The word Congress, as then and long afterwards used, meant, according to its literal import, the coming together of the agents of the colonies, and did not mean, as it would now be understood, the assemblage of a legislative body in a government. The delegates that convened in the Congress in September, 1774, at Philadelphia, were separately by each colony commissioned, "with authority and direction to meet, and consult together for the common welfare." That Congress in defining the political position of British subjects in America, passed resolutions, declaring that "from the necessity of the case, and in regard to the mutual interests of both countries, they cheerfully consented to the operation of such acts of the British parliament as were *bona fide* restrained to the regulation of their general commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members: *excluding every idea of taxation for raising a revenue on the subjects in America without their consent.*" Thus they acknowledged themselves to be subjects of the British empire, but dissented only to the claim of parliament to tax them to raise revenue for the empire, because they were not represented in parliament,—because it would be a flagrant abuse of power, not warranted by the fundamental principles of the English government, that taxes, for general revenue, for the support of the government, were voluntary assessments, granted by the people, or their representatives in parliament. As the colonists had not given their consent to them by representatives in parliament (having none there), nor by their representatives in their colonial legislatures, the imposition of such taxes upon them by the British parliament would be forced exactions, which might be increased to an extent that would impoverish them without any peaceable remedy for their relief.

To submit to this would be a surrender of the measure of their prosperity, and even that of the means of their livelihood, as a people, to the discretionary will of a body of persons, foreign to themselves, over whom they could have no control, who would be interested in diminishing their own burdens, just in proportion as they would increase the burdens upon the colonists. This Congress, as a peaceful means of redress, sought to make the tax fruitless, by advising the colonists, as individuals, to personally refrain from importing, purchasing, or using the articles, thus taxed. The

voluntary compliance with this advice by the people as individuals, with some aggravating circumstances, brought on the commencement of hostilities and inaugurated the war near Boston, in Massachusetts. In all this they acted as mere agents for the separate colonies respectively represented by the delegates.

In this condition of affairs the delegates convened in Congress in May, 1775, with increased powers conferred on them, for action as well as consultation and advice. They were instructed to "concert, agree upon, direct, order and prosecute such measures, as they deemed most fit and proper, to obtain redress of American grievances." Very soon after their meeting, they appointed Gen. Washington commander in chief of the colonial forces, called upon the respective colonies for troops, emitted bills of credit, (called continental money), upon the faith of their payment by the colonies. The period, between this meeting of Congress and the 4th of July, 1776, may be denominated the transition period, in regard to the location of sovereignty.

Very soon after hostilities commenced, the colonies commenced to act independently in the control of their own public affairs, and in their co-operative efforts under the advice and direction of their agents in Congress. The absolute control thus assumed was provisional; that is, dependent upon the future events, either of a reconciliation with the mother country, that they still hoped for, or of the forming of a more perfect government, if an honorable pacification could not be effected.

During this period, Lord Howe appeared with a naval armament off the coast, and, on behalf of England, sought an interview first with Washington, and afterwards, with three commissioners appointed by the Congress, who were Dr. Benj. Franklin, John Adams and Edward Rutledge. But as he would not recognize their official position, no negotiations for pacification were entered into. After all hopes of peace had been abandoned, Congress advised the colonies to take steps at once to organize such governments, *based upon the sovereignty of the people in each colony*, as were necessary for the independent action of each; and, in pursuance to that advice, every one of them occupied that position on or before June 1776; four of them, New Hampshire, South Carolina, Virginia and New Jersey had, by delegates in conventions, adopted State Constitutions, previous to the 4th of July, 1776, and the others were taking steps that resulted in their doing it, except Rhode Island, that, for a long time, carried on its government under its royal charter, and all of them in fact were then acting as independent governments internally, in defiance of the former sovereign power of England. So that, when the Congress, on the 4th day of July, 1776, declared "that these United Colonies are, and of right ought to be, free and independent States," they simply announced an existing fact, as their agents, and on their behalf,

Their declaration did not make them so, as is sometimes said, by any right of sovereignty, either possessed, or assumed, by the Congress then making "The Declaration of Independence."

In forming State Constitutions, each one of the colonies declared that "the people of this State have the sole and exclusive right of governing themselves, as a free, sovereign and independent State," some of them expressly and all of them by the use of terms, conveying the same meaning in substance. From this time until the 4th day of March, 1789, when the present United States Constitution went into effect, the right of sovereignty was in the people of each State, as separate independent communities. Some embarrassment in the action of Congress having been experienced, from the fact that the separate commissions of the delegates were differently expressed, a necessity was felt for the adoption of an agreement by all of the States, in which the authority, delegated by each State, should be the same, and that larger, and more specific powers should be granted to them. To accomplish this, the Congress prepared "The Articles of Confederation" and submitted them to the legislatures of each and all of the States in 1777, which were finally adopted by all of the States on the 1st day of March, 1781.

This made no change of the status of the sovereignty of the States whatever. For in the 2d Article it is declared, that "each State retains its sovereignty, freedom and independence." (This clause will be referred to again and be given entire.) Congress having appointed commissioners for the purpose, a treaty of peace was concluded in 1783, in which the freedom and independence of the thirteen States, by name as New Hampshire, Massachusetts, etc., were acknowledged. Congress continued to act under the Articles of Confederation, just as it did in the main, when the delegates had separate authorities given to them by each State. The delegates representing the Colonies on the 4th of July, 1776, continued to act for the States afterwards, without any commissions, and the same delegates, representing the States on the 1st March, 1781, continued likewise to act under the Confederation. On all important subjects, each State had one vote only. Neither the Congresses, before or after the Federation, had, or assumed to have, or to exercise any right of sovereign power, but only such powers as had been delegated to them respectively. If at any time they exceeded their authority in their action, as they probably did, when they, in effect, made General Washington Supreme Dictator for a time, it was on the principle, that any agent might, upon some pressing emergency, act in excess of his authority, under the expectation that his principal would ratify, or knowingly acquiesce in such act.

The term delegates, and their act of representing their States and not themselves in Congress, rebuts any possibility of a con-

clusion, that Congress had any inherent right of sovereignty. Fortunately there is one of the Articles in the Confederation which makes a clear distinction, between the *right of sovereignty*, residing in the people of each of the States, and the *powers of government*, delegated to the Congress by them. It is as follows: "Art. 2. Each State retains its *sovereignty*, freedom, and independence, and every *power*, jurisdiction and right, which is not by this confederation, expressly delegated to the United States in Congress assembled." ("The United States of America" was the name given in Art. 1 to the Confederation.) That is, each State retains its sovereignty complete, but delegates certain powers, jurisdictions, and rights to the United States in Congress, to be exercised by the delegates of each and all of the States in Congress, in the mode indicated in the Articles, for and on behalf of all of the States united.

During the existence of the Federation, Virginia by an act of its legislature, Dec. 20th, 1783, authorized the transfer of the Northwestern territory to "the United States in Congress assembled, for the benefit of said States." The deed of cession thus authorized to be made by her delegates in Congress, Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, contains the expression reciting the transfer to be made to "the United States in Congress assembled, for the benefit of said States, Virginia included." Showing that the Congress was made the agent or trustee for the management of the territory ceded, for the benefit of the whole of the States collectively.

Thus has it been shown that, up to the 4th of March, 1789, when the present government went into operation, with Washington as the President, all the powers of government, that had ever been exercised, in any assembly, or agency whatever, for, or on behalf of the people in America, were delegated powers, except only in the exercise of the sovereignty of the people in each one of the colonies, in the acts of forming their State Constitutions, by which each one of them assumed to be a sovereign, free and independent State.

The word state, as then used, meant an association of people, which embraced a sovereign power for its control, as a separate nation, amongst the nations of the earth. England was spoken of as a state, and likewise France, and other independent European powers. It did not then have the meaning, often attributed to it now in the United States, as being a subordinate body politic.

The powers delegated to the Congress, in the Articles of Confederation, were in the main only such as they could execute for the States, in carrying on the war. As soon as the war was ended, the Congress had but little to do within the scope of its powers. It had no power to levy and collect taxes for the purpose of paying the debts, that had been incurred, or to defray its ordinary ex-

Th. Indeed, to the extent of the powers that enabled it to act by a it was a government of imperfect obligation, dependent on the States to furnish the means necessary for its action. It was in danger of a collapse, from the neglect of the States. This caused delegates to be appointed, by the legislatures of the several States, with authority to meet together in convention, and revise, and amend the Articles of Confederation, so as to make a more perfect or efficient government for the union of the States.

The Constitution of the United States was, by the convention agreed upon, and afterwards ratified by the people of each State separately, through their delegates in convention assembled, in each one of the States. Its ratification was an act of sovereignty, performed by the people of each State, acting separately. All of the States having done the same thing, the same powers of government were thereby delegated, by each and all of them, to the departments of a government "for the United States of America." By this sovereign act of ratification, each one of the States withdrew from its State government some powers that it had previously delegated to it, and from the United States of America as a confederation, those powers that had been delegated to them, and delegated them to the departments, legislative, executive and judicial of the new government, then and thereby instituted, for the same United States of America, that had formed the Confederacy.

By this means each State, in the exercise of its sovereignty, had delegated powers of government to two separate and distinct governments, each of which should act directly on all of the people of the State to the extent of the powers allotted to it in the division. This ratification did not have the effect to impair or destroy, in whole or in part, the right of sovereignty of the people of each State. In delegating to those persons and bodies, who should fill the different departments of this government of the United States, certain specified governing powers, the right of sovereignty was not conferred upon it, any more than it was in the former shape of the government of the United States, called a confederation. Though the delegation to this was directly by the people of each State, still, in both cases, it was equally but a delegation of powers, which necessarily implied the continued existence of a superior power, that made the delegation. The granting of more enlarged powers of government did not change the relation of the grantor to the thing receiving the grant. The assumption, that the right of sovereignty was conferred upon the federal government, would contradict the American doctrine, that it exists and abides alone in the people; for it could not at the same time be in the people, and in those persons and bodies of persons to whom governing powers have been delegated. Here again, we see illustrated the oft-repeated distinction, made in the previous governments in

America, between the right of sovereignty retained and the powers of government delegated. And this distinction would be equally the same, whether it was made by the aggregate mass of people, in the territory of all the States, or by the people of each State separately, as it was in fact; and whether it was done by the one, or by the other, the powers of government delegated, and the nature of the government created, would be the same. All sorts of delegation, representation, or deputation, whether thereby a government, a corporation, or a mere personal agency is created, are dependent upon some subsisting superior power, for their creation and continued existence.

It is contended by many persons that the people of each State, in the act of ratifying the Constitution of the United States, lost a part of their right of sovereignty, as it before was possessed by them, and merged it into an equal portion of the sovereignties of each and all of the other States, and thereby, to the extent of the powers and objects of government specified in the Constitution of the United States, all the people within the territory of all of the States, by mutual agreement, formed themselves into one body politic, as one people, one State, one nation, and it was from them in their aggregate mass as one people, that the powers were delegated, instituting the government of the United States. This government could have been instituted with all of the power granted to it, just as well, by each one retaining the right of sovereignty, as was done when the United States, as a confederation, was instituted only a few years previously, as by dividing the sovereignty of each, if such a thing were possible to be done. Therefore the division, if it really took place, was a useless and fundamental change in the sovereign right of each State, in a mode differing from all previous precedents and practice, in making governments in America. In view of the previous precedents, it is easy to understand how the people of a sovereign State could grant powers to two governments, on different subjects, acting on the same people in the States, just as they could divide the powers of the State government into three distinct departments, legislative, executive, and judicial. But it may not be so easy to perceive how a person in a State could be a unit in the sovereignty of two associations of people, composed of different bodies of persons or a unit in two half or fractional sovereignties.

The question is, did the ratification have such effect? Did each of the thirteen States mutilate the sovereign body politic of each, and, out of the part severed, fabricate another—the fourteenth State, or nation, called the United States of America? Did they intend to do such a thing, unheard of, and unknown in all history of mankind, unnecessary, and destructive of their dearly cherished absolute sovereign right? To maintain the affirmative, reference

is made to the preamble of the Constitution, which reads as follows :

"Preamble.—We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, and promote the general welfare, and secure the blessings of liberty to ourselves, and our posterity, do ordain and establish this Constitution for the United States of America."

The preamble of an instrument has no intrinsic binding force as a part of it, but may be used to throw light upon what may be of doubtful import in terms used in the body of the instrument. But, giving all the force that can be attributed to a preamble, it does not establish the position contended for to the destruction of separate State sovereignty, when properly understood. The first article in the Articles of Confederation is as follows :

"ART. I. The style of this Confederacy shall be "The United States of America." And in the Declaration of Independence it is said : "We, therefore, the Representatives of the United States of America." When thus used it meant the American States united; for they were declared, and all and each of them declared themselves then to be sovereign, free and independent States, in forming their Constitution, and acted accordingly.

That government of the United States existed at the time the Constitution, with the above recited preamble, was framed by the convention, and ratified by the people of each State, and indeed some time afterwards, until the 4th of March, 1789, when the present government was organized. The term, United States, was sometimes used as the name of the government created by the Constitution, as in the clause guaranteeing the States a republican form of government; but that government was not in existence until the 4th of March, 1789. Now, if we put the words of the preamble in the mouths of the people of each State, when they were in the act of ratifying the Constitution in convention, and they should say, "We, the people of the United States," would they be understood to mean that they were the people of the then existing United States, or the people of the United States, that was to be the name of a government that might or might not at some future time exist? They evidently designed to express that which was a fact, then existing, when they in effect uttered the words. And it is equally certain, that the delegates in the convention that framed the Constitution, understood the expression in the same way. By reference to Elliot's Debates, it will be seen that the preamble, when adopted by the convention, read, "We, the people of the States of New Hampshire, Massachusetts," etc. (naming the thirteen States), and that the committee of revision, whose office was merely literary, caused it to be altered, because some of the thirteen States might not ratify the Constitution, which proved to be

a true expectation, as to two of them, until after the government was organized. Further, in the preamble it is said, "We," etc., "do ordain and establish this Constitution for the United States of America," meaning for the States then united, subject, of course, as provided elsewhere, that they ratified it, and to take effect, as to any nine of them, if that many should ratify it.

The preamble says, "We, the people of the United States, to form a more perfect union," etc. A more perfect union of the States, than the union of States formed by the Confederation. Union was the then usual and proper term to be used to connect States, under a common form of government of delegated powers, as was done before in the Articles of Confederation, but not to connect people as individuals in a sovereign association, in mass, nor was it so used in any of the State constitutions. That it was a union between them as States is shown by expressions in the body of the Constitution: "Art. 7. The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between them." That is not by or over them as one people, but between them as States.

"Art. 3. Sec. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." Why "only in levying war against *them*?" Because treason is an offense against a sovereign power, and that is the reason it did not say that levying war against the government of the United States would be treason.

The federation, though a government, was a compact between sovereign States in express terms. The people of the several States remodeled their government, by granting the additional powers, that would remedy its defects, and declared that if ratified by nine States it would be "the establishment of this Constitution between the States so ratifying the same."

The terms, in the preamble, having been explained, and some of those in the body of the instrument having been referred to, there are numerous facts, contemporaneous and subsequent, that raise strong presumptions against the destruction of the right of sovereignty in the States by the ratification of the Constitution.

Each State acting in its separate and sovereign capacity in delegating powers to create the federal government, as it had done to create its State government, there was no necessity for surrendering any part of its sovereign power; and therefore, so radical a revolution of its rights should not be presumed, except upon the plainest evidence of it. Upon the supposition that so extraordinary a change was made, is it not strange, that the wise and good men, who framed the Constitution, did not insert some clause that would have plainly developed the fact. Again, suppose the people had understood, that they were forming a new political aggregated association of all the people in the territory of the Union, so as to

constitute one people,—one State, would they have formed a government, organized as that provided in the Constitution? They were thorough republicans, and believed in equal political rights, and equal representation, and the right of majorities to control in public affairs; and therefore, in forming a government by and for the one people, it would be expected that these principles would be found pervading it. Strange to say, that there is not one of them, that is assured and made certain, in the organization and operations of the government that was formed in reference to the population in the aggregate of the supposed one people. It is possible that minorities, and sometimes very small ones, may elect a President, make a treaty, appoint judges and military officers, prevent a change of the Constitution, prevent the passage of laws, prevent the admission of new States, require Congress to call a convention to change the Constitution, or even change the Constitution, and supposing the population of each State stood, when the Constitution was ratified, as it did shortly after in 1790, when the census was taken, nine States, with a population of 1,390,000 could dissolve the old confederation, establish the new Constitution, and throw out of the Union four States, containing 1,700,000, to-wit: Massachusetts, New York, Pennsylvania and Virginia, if each and all of the four failed to ratify the Constitution, they having a majority of over 300,000 people. Those who framed the Constitution and those who ratified it, must have been cognizant of the possibility of such results, from the well-known disparity of the population and extent of territory in the several States, which must necessarily continue to exist. An examination of the census, at different times, and the apportionment of representatives, will verify the possibility of the results as stated. Its shape is federal in every respect and not national. In the convention that framed the Constitution, all agreed in preserving the endangered Union by making more efficient government, especially on the subject of regulating commerce, levying and collecting taxes to defray its own expenses, and the creation of a judiciary to enforce its laws directly on and for the people, as State governments did. A portion of the delegates sought to make it the representative of a consolidated State, a nation, but the majority, desiring to preserve its federal character, after a great struggle, rejected every word that savored of nationality.

Those who advocated the ratification in the State conventions, and in the press, were called federalists, not nationalists. Viewed as a federal union between sovereign States, its structure and powers are appropriate, with a reasonable addition of influence given to the larger States in the popular branch of Congress, that has the exclusive right to introduce bills for raising revenue. It elects the President, and members of Congress, and amends the Constitution by States. Viewed as the representative of one people in the ag-

gregate, a nation, it is an outrage upon the principles of equal political rights in all of its organism, and possible action, as prescribed in the Constitution. There is another strong presumption founded on the facts of the history of that period. Those people from 1765 to 1776 were engaged in a painful and agitating contest with the mother country, a sovereignty foreign to themselves in locality, in regard to the right of parliament to tax them for general revenue; then, after renouncing their allegiance, enduring an exhausting war for seven years to maintain their assumed State sovereignty, and then, in peace for five years more, cementing its bonds, and priding in its possession, would they then abandon the absolute sovereignty of States, so acquired, enjoyed and cherished, and put the power of controlling them irrevocably in the hands of any people or government, beyond the limits of their respective territories?

Had the people of each State so soon forgotten that it was their opposition to the assumption of the unlimited power of taxing them by parliament that had brought on the war, which resulted in their having to assert and maintain their State sovereignty, as against the sovereign power that was previously over them? It was not the want of representation that controlled them. It would have done them no good from its smallness. They did not want it, and if it had been tendered them, their opposition would have existed with equal force. Would the people of a State knowingly place themselves in the same position, substantially and practically, by irrevocably surrendering to another government the unlimited power of taxation with no recourse from ruinous oppression, but the votes of its representatives in Congress, and a resort to arms in rebellion against the sovereign power they had helped to create over them?

How do these presumptions stand, founded on facts, as against the baseless fabric of a deductive theory, that a nation was manufactured out of the mutilated fragments of the sovereignty of thirteen free and independent States, whose glorious achievement of independence have received the plaudits of the lovers of liberty throughout the earth, and will continue to do it in the great future, as long as patriotism is regarded a virtue?

We may also refer to contemporaneous and subsequent construction and understanding with advantage.

New York and Rhode Island expressly reserved the right to resume the powers delegated to the general government in the resolutions of their conventions, ratifying the Constitution. Many of the new States recognized and asserted the right of State sovereignty in forming their Constitutions. That of Ohio in 1802 contains the following: "We, the people (in a certain territory described, etc.), do ordain and establish the following Constitution, or form of government, and do mutually agree with each other to

form ourselves into a free and independent State, by the name of the State of Ohio." This needs no comment. The same words were used in the Constitutions of Tennessee 1796, Louisiana, 1812, Indiana, 1816, Mississippi, 1817, Illinois, 1818, Alabama, 1819, Missouri, 1826, Maine, 1820, Michigan, 1835, Florida, 1838, Kansas, 1855, Iowa, 1857.

A more potent evidence of the recognition of State sovereignty is to be found in the great influence it has had repeatedly in shaping the action of the administration of the general government. It was presented as a dernier resort for relief against unconstitutional action in the resolutions of Virginia and Kentucky of 1798 and 1799, which changed the administration from the party, called the Federalist party, into the hands of that called the Republican, with Mr. Jefferson as President. And those resolutions were approved in the platform of the party generally dominant up to the late civil war.

Before that Georgia had refused to recognize the right of the Supreme Court of the United States to bind it by a judgment in a suit, instituted against it, by a citizen of another State. That caused Congress to take the proper steps for a change of the Constitution on that subject, which resulted in the adoption of the 11th Amendment.

The refusal of the States of Massachusetts and Connecticut to furnish their quota of troops in the war of 1812, and other measures looking to a probable resort to secession, if the war continued, greatly weakened the efficiency of President Madison's administration, and probably hastened the efforts to make peace with England.

In the struggle in Congress over the restriction of the spread of slavery, upon the application of Missouri for admission into the Union, the danger of bringing into requisition State sovereignty as a mode of relief against the power of the majority, induced the Missouri compromise of 1820. South Carolina, by preparing to assert its right of sovereignty, in resisting the tariff measures in 1832-3, induced a compromise by which Congress provided for a reduction to a revenue standard in nine years.

It was the leading influence in the slavery agitation that produced the compromise acts of 1850.

In all of these instances it acted as a check in preventing, or at least modifying the excessive assumption of power by majorities, and was effective in doing it in a considerable degree, when probably nothing else would have done it. It has been previously stated that the right of sovereignty in a State or people may be destroyed by force. It may be gradually impaired until it will be substantially lost, by the aggressive assumption of another power, in connection with the State, having been submitted to. Thus the legislative and judicial action of the general government, and the sup-

porters of its increase of power, through a long series of years, had exerted such an influence upon the minds of a majority of the people in the United States, as to cause the right of the sovereignty of the States to be authoritatively denied, and disregarded practically for the first time in 1860, and during the civil war.

The Southern States, in 1860 and 1861, asserted, and put in execution their right of sovereignty by seceding from the Union. That caused many good men to make efforts for a time to make such a compromise as would secure the right of the minority, which were deemed to have been jeopardized. And though many statesmen in the North recognized the right, it was overwhelmed and sunk out of view by the long continued agitation of the slavery issue, by the idea of "preserving the life of the nation," by the announcement *in terrorem* of the "irrepressible conflict between free and slave labor, and that all of the States must be either free or slave States," and by numerous other antagonisms. The war and the surrender of the South, at the end of four years, were the consequences.

A LECTURE.

UPON THE CLOSE OF THE WAR AND THE RECONSTRUCTION OF THE SOUTHERN STATES BY PRESIDENT ANDREW JOHNSON, AND PARTICULARLY ITS CONSUMMATION IN TEXAS.

The surrender of General Lee, being soon followed by that of General Joe Johnston, and also by that of General Dick Taylor, east of the Mississippi river, destroyed the hopes of separate independence. There were conflicting opinions as to whether the trans-Mississippi department should continue the struggle or not. It was believed by some that if we would hold out, many of the officers and soldiers east of the river would come to our aid, and that our example would give encouragement to renew the struggle east of the river. Others; however, regarded our defeat as a mere matter of time. General Grant had shown it to be certainly practicable for two or three Northern soldiers to subdue one Southern soldier, a problem that no other federal officer had solved during the war. He had gone about it systematically, and had three times accomplished it, the first at Fort Donaldson, the second at Vicksburg, and the third at Richmond. He had invariably planned and fought for certain victory, by the simple process of taking such time, and using such means as were necessary. Nor is it to be regarded as any little merit in generalship, that he repeatedly did it, considering the haste of the Northern mind to "crush out the rebellion." Surely he would not fail in his fourth attempt, which would have been to subdue the trans-Mississippi department. He had learned his lesson too well for that.

Texas had not been scathed by the ravages of war. Her towns, villages, houses and farms had not been laid desolate by fire. The federals had never held, otherwise than temporarily, possession of any part of her territory, which had been confined to the coast of the gulf at Galveston and at Brownsville. Many of her sons had fallen, with sickness and in battle, at a distance from their homes. Her people, men, women and children, had labored and suffered hardships and privations in body, and agony of mind, for four long years. Their cause was lost; and when Gen. E. Kirby Smith surrendered on May 27, 1865, the mass of people, officers, soldiers and citizens, were generally prepared for it. Then ensued a scene not

inaptly denominated, "the break up." The higher officers left their commands, and the soldiers and officers of the line divided out the teams, the quartermaster and commissary stores, and with guns in their hands, departed for their respective homes. The military posts in almost every town and village of the State were sacked without restraint. The roads all over the country were filled with men, by twos, by fives, by tens, by twenties, by fifties, and by hundreds; some walking, others riding, but all without any compulsory organization. Every house on the way was open to them to supply their necessities and make them welcome, usually without charge. For two or three weeks, this dreadful stream of commotion and excitement passed in review, throughout the widespread land. Strange as it may be, not a murder, robbery, outrage, or personal indignity of any serious character was heard of anywhere. The only strife was amongst the soldiers about the division of the spoils, consisting of the public property; and that was generally settled amicably; or very quietly by the force of numbers without a conflict. It is impossible to portray on paper the excitement, the despair, and the dread, all mingled in the feelings of one who surveyed this scene. After the storm followed the calm. For three months we had no officers of State, county or town, and but few federal troops, who were for the most part traveling in squads gathering up the public property that could be found. There was but little attention paid to labor or to business of any kind, and there was a stagnation in traffic of all sorts. The whole country reposed in despondency as to the past, and in silent dread as to the future. The general gloom chained down the passions and vices of men, and rendered them harmless to each other in the entire absence of legal restraint. A fellow-feeling of misfortune drew out the kinder sympathies of our nature, which were aided and fostered by the traditional and habitual respect for law and order. But the trials of the people on this subject was not yet over. For on the 19th day of June, 1865, Gen. G. Granger, of the federal army, by proclamation at Galveston, took military possession and command of Texas, and issued orders declaring "all acts of the governor and legislature of Texas since the ordinance of secession, illegitimate," and calling upon all Confederate and State officers and soldiers to repair to certain places in the State to be paroled. He also declared the negroes to be set free. Again the roads were filled with traveling soldiers; and again they and the citizens exhibited the same orderly conduct, and the negroes generally, for that year, remained at their homes with their former masters.

It was not until about the 25th of July that Gov. A. J. Hamilton arrived in Texas to organize a civil government within the State, and it was at least a month more before the various civil officers were appointed and commenced the exercise of their duties. Dur-

ing all this period the officers of the State did not assume to discharge their duties as officers, because they had no assurance that their acts would be recognized as legal by the military authorities, or respected by the people. Indeed, it was generally understood, that their authority as officers was wholly repudiated by the government of the United States. On the 25th day of July, 1863, Gov. A. J. Hamilton, at Galveston, issued his proclamation announcing to the people of Texas, that he had been appointed by President Johnson provisional Governor for the State of Texas, for the purpose of organizing a civil government therein. The question here arises: By what authority did President Johnson undertake to organize a State government for Texas. His proclamation of the 17th of June, 1865, appointing A. J. Hamilton "Provisional Governor of the State of Texas" gives us the answer by assuming that the people of Texas had been deprived of all civil government by the "rebellion," which had been waged by a portion of the people of the United States against the properly constituted authorities thereof, and that it was the duty of the United States to secure to the people of Texas the enjoyment of a republican form of government, and protect them against invasion and domestic violence; and that it was his duty, as the chief executive officer, and as commander-in-chief of the army, to cause the laws to be executed.

Under this view of the disorganized condition of the people of Texas, and of the obligation of the government of the United States to them, and of his duty and consequent power to direct and carry out the performance of that obligation, he, in said proclamation, directed the various officers of the federal government and heads of departments to carry into effect the laws of the United States within the State of Texas. This was done to impose on the people of Texas their federal obligations which had been temporarily disturbed, and to give to them the benefit of the direct action of the laws of the United States for their protection as citizens of the United States. And, as a full resumption of their federal relations could not be accomplished in the entire absence of an organized State government (none then existing in Texas), the President undertook to provide means, and direct the mode of enabling the loyal people of Texas to frame a constitution, and organize a State government, whereby justice might be established, domestic tranquility restored, and loyal citizens be protected in all their rights of life, liberty and property. Who were the loyal citizens that he thus sought to enable to make and organize a State government in Texas for their protection, as the finishing act in the renewal and complete resumption of their federal relations? This question must be answered by reference to a former proclamation issued by the President on the 29th day of May, 1865, which offered amnesty and pardon to all persons that had been engaged in the rebellion, with certain specified exceptions, who would in good faith take and ob-

serve an oath to henceforth faithfully support, protect and defend the Constitution of the United States and the union of the States thereunder, and to abide by and faithfully support all laws and proclamations, which have been made during the existence of the present rebellion, with reference to the emancipation of slaves. This oath was designed to be, when taken, as it afterwards was by the mass of the people, a solemn surrender of the issues of the war, secession and slavery, and which when taken and observed in good faith, was designed by the President to be a restoration of the citizen to a state of loyalty to the government, and to such persons did he design to entrust the power to reorganize State government in Texas. It was obvious that if the persons who took this oath undertook to revise and reform the Constitution of the State, the future right of secession and right to hold slaves must be abandoned in it, and thereby the professed object of the prosecution of the war, on the part of the North, would be attained so far as Texas was concerned. During the whole time of the war, the President and Congress most carefully avoided recognizing the existence of the Confederate government in any shape whatever, and persisted in treating those engaged in hostility as disaffected individuals acting under a "so-called" Confederate government, and who, by their unlawful acts, were interrupting the execution of the laws of the United States in the Southern States of the Union; and not as seceded or even as revolted States, that had separated themselves from the federal Union.

The government, in the most solemn form, had proclaimed to the world, that the object of the war was simply the preservation of the Union. President Johnson had gone a step farther, in accordance with the precedent set him by President Lincoln, and sought to put an end to slavery, which had been the immediate cause of the war; and by that means a recurrence of a similar difficulty would be avoided on that ground. That view of the subject, as the proper terms of pacification, is sanctioned by the practice and usage of nations who have to go to war to settle impending difficulties.

By what means, and in what mode, did President Johnson enable the people thus made loyal, as well as those who had remained loyal, to organize a State government in Texas? First, by appointing A. J. Hamilton provisional governor of the State of Texas; second, by making it his duty, in the proclamation appointing him, at the earliest practicable time to prescribe such rules and regulations as may be necessary and proper for convening a convention to be chosen by the loyal people, for the purpose of altering and amending the Constitution, and to exercise such powers as may be necessary to enable them to restore the State to its federal relations; thirdly, by prescribing that those should vote in the election of delegates to the convention who were qualified voters by

the Constitution and laws of the State of Texas immediately before the date of the "so-called" secession, and who had taken the amnesty oath; and that delegates should have the same qualifications, and fourthly, by recognizing the right of the people of Texas as a State acting in convention, or through its State legislature afterwards to be assembled, to determine for itself the qualifications of its voters and officers. The President not only acted under his constitutional power to grant pardons, but also under an act of Congress of 1862, the 13th section of which read as follows, to wit: "The President of the United States is hereby authorized, at any time hereafter, by proclamation, to extend to persons who may have participated in the existing rebellion in any State or part thereof, pardon and amnesty, with such exceptions, at such time, and on such conditions, as he may deem expedient for the public welfare."

The object in dwelling upon these proclamations is to deduce from them the view of the President of the political status of Texas, and his plan of reconstruction.

First. He regarded Texas as a State of the Union, with all the rights of a State under the Constitution of the United States, unimpaired by the war, and with a constitution and laws of her own; not having the right to secede, and not therefore having in fact seceded from the Union.

Second. He considered that Texas had no civil officers to execute her laws existing under her Constitution of 1845, as the result of the participation of the mass of her people in erecting an unconstitutional government (in 1861) in opposition and hostility to the general government of the United States, and that both her federal relations and internal administrations were suspended.

Third. That Texas could not resume her federal relations without her corporate powers, embodied in her subsisting constitution and laws being put into activity by the election of officers and the reorganization of civil government.

Fourth. He considered that if the people of Texas were allowed to retain the de facto government which they had at the close of the war, or to organize another of their own accord, and according to their own views, that they might do so without repudiating secession and slavery, and in that event the issues of the war would not be surrendered by the people of Texas; and that therefore they would be as free, so far as it relates to their constitutional obligations, to renew the strife, as they were to commence it before the war.

Fifth. He considered that if any other power than the people of Texas themselves, should institute a government for them, with the rights of secession and slavery abandoned, and prescribe who should vote and hold office in Texas, it would to that extent, abrogate her Constitution of 1845, and place Texas in a position of in-

feriority as a State, so that she could not resume her federal relations and exist within the Union upon terms of equality with other States. Without that state of equality the union of the States could not be restored and exist, as it was contemplated to be by the Constitution of the United States.

Sixth. He considered that the great mass of the citizens had been guilty of treason against the government of the United States, but that it was not practicable, if desirable, to attempt a prosecution of the great mass of them; because, if for no other reason, the Constitution required them to be prosecuted within the federal judicial district in which the alleged offense was committed.

Under these views, the President adopted the plan of holding the people of Texas, (as well as those of other Southern States) in military subjection by the army, and of offering amnesty and pardon (with certain exceptions), upon their taking an oath which should bind their consciences to a surrender of secession and slavery, as future rights not to be claimed by them; and when they should become so bound, they might be trusted to revise and alter the State constitution, and reorganize the State government in conformity to their oath-bound obligation, which, when thus voluntarily done, would enable the State to resume its federal relations under a government of their own creation, as contemplated by the Constitution of the United States; and at the same time, the object of the war would be fully accomplished in the surrender of the right of secession and slavery by the State itself; which would then stand in harmony and on terms of political equality with the other States of the Union.

President Johnson designed, by his plan of reconstruction, to accomplish two leading objects, to-wit: To eradicate the causes of disagreement in political sentiment, that had existed between the South and North; and at the same time to reinstate and preserve the Union as a Union of States, in accordance with the theory of the Union Democracy, thereby checking what he considered the revolutionary tendency towards consolidation.

To carry out this plan, A. J. Hamilton was appointed provisional governor of Texas, an office invented and named for the purpose. On the 25th day of July, 1865, in Galveston, Governor Hamilton issued his proclamation "To the people of Texas," indicating the steps to be taken, to-wit: the appointment of persons in the respective counties to administer the amnesty oath, and to register the voters, preparatory to an election for delegates to a convention; the appointment of State, district and county officers, "there being no civil officers in the State;" the holding of a convention, with powers to organize a "full and complete State government," whose action should be submitted to the qualified voters of the State. It was also therein announced that the general laws and statutes of the State in force immediately before the

first day of February, 1861 (the date of the so-called ordinance of secession), are to be respected and enforced. And all laws, or pretended laws, acts or resolutions of any legislature, convention, or pretended laws, acts or resolutions of any legislature, convention, or other authority, based upon a supposed dissolution of the Union, or inconsistent with the idea of Texas being an integral part of the United States government are inoperative and void, and no longer to be respected or obeyed by the public, officers, or citizens of the State; and the courts when established, will proceed according to the laws, usages and forms existing immediately prior to the said first day of February, 1861, except in so far as they may be affected by the emancipation of slaves in the State by authority of the United States, or by other acts for the suppression of the late rebellion."

Pursuant to a request of Gov. Hamilton at Galveston, a large number of citizens of Texas, generally Union men, met him at Austin, and gave him their assistance in selecting, and many of them in accepting, the civil offices in the State. In many of the Southern States, particularly in Mississippi and Alabama, the officers that had been elected by the people during the time of the confederacy, except those in the executive departments, had been generally retained upon their taking the amnesty oath and the ordinary oath of office. In Texas, however, very few were retained, unless they were known to have been Union men during the war; who seemed to have had a private knowledge of each other extensively over the State. There were some counties and districts, however, where competent officers of Union proclivities could not be found, or would not accept office; and in such cases, selections were made from the ranks of the secessionists. A notable instance of this was in the appointment of Richard Coke, of Waco, as district judge, who accepted the office at the solicitation of both Union men and secessionists. There was no appointment of justices of the Supreme Court, and therefore their offices remained vacant.

During the summer and early part of the fall of 1865, the offices were generally filled, and the courts were opened and held at the times and places that they had been held at during the time of the Confederacy, which was done under the proclamation of the governor.

In the administration of law in the courts of that period, the acts of the State Legislature relating to matters merely local within the State, and not in violation of the Constitution of the United States or directly or indirectly promotive of the objects of the civil war, were carried out.

The governor levied and collected a tax to defray the expenses of government as well as the convention to be held.

By a proclamation of the 15th of November, 1865, issued by the governor, an election for delegates to a convention was held on the

8th day of January, 1866, just five years after the election for delegates to the secession convention, that having been held on the 8th day of January, 1861. They met in Austin on the 7th day of February, 1866, and proceeded to the business before them. James W. Throckmorton, of Collin county, was elected president of the convention. Before the war he had been a secessionist in principle, though openly and strongly opposed to it as impolitic. He was one of seven members of the convention in 1861, who voted against secession. But when the die was cast, he expoused the cause of his State, even during the session of the convention. He exerted himself in the northwestern part of the State, which was generally opposed to the movement, to harmonize public sentiment into a cordial acquiescence, and had much influence in its accomplishment. He went into the army; was a major in a regiment, did good service, and at the close of the war, he was in the service of the State upon the frontier, with the rank of brigadier general. Having been a prominent member of the legislature for several years before the war, having been a strong Union man, and then having rendered good service to the Southern cause during the war, there seemed to be a general impression of his fitness to be a prominent leader in the work of reconstructing the State under the plan of President Johnson. His election, therefore, was received with general approbation.

The work before this convention was of a most delicate and arduous character, for three reasons: First, the subject of readjustment intrinsically involved numerous difficult and perplexing questions. Secondly, but little light was furnished as to what would be required of the convention further than a renunciation of slavery and the right of secession. Thirdly, the signs of a disagreement between the President and the Congress as a body had already begun to appear; and the governor was regarded as in the interest of the Congress, though an appointee of the President to carry out his plan of reconstruction; and hence, whatever might be done was, at best, a mere experiment.

The work that was done by the convention may be briefly considered under two heads: First, a series of ordinances passed finally by that body, without submitting them to the people, the object of which was to readjust the State internally and externally to the new state of things then presented. Second, a revision and amendment of the Constitution of 1845, which was still regarded as in force, the amendments of which were submitted to the vote of the people of the State for their approval or rejection. They were afterwards approved by a vote of 28,119 in favor, to 23,400 against them.

The important ordinances were those declaring that the ordinance of secession is null and void, and renouncing the claim of the right of the State to secede; declaring the war debt to be void

and preventing the Legislature from making provision for its payment; making valid the laws and acts of the officers of the State since the 1st of February, 1861, which were not in conflict with the Constitution and laws of the United States, and making various other provisions, the general effect of which was to cause the government of Texas during the war to be judicially regarded as a government *de facto*, without the necessity of proving that fact, and also declaring the slaves to have been set free within this State, by the government of the United States by force of arms, and by the amendment of the Constitution of the United States (then lately adopted), and declaring their equality before the law in the enjoyment of their rights of life, liberty and property, and allowing them to be witnesses in all cases where one of their own race might be a party. This ordinance was entitled "Freedmen," and was incorporated in the amended Constitution as Art. VIII, Sections 1 and 2, though it was not submitted; but, as the other ordinances, was passed unconditionally. The amendments that were submitted to the vote of the people, related mainly to but few subjects, to-wit: a change in the mode of altering and amending the Constitution, providing for calling a convention, releasing to grantees or owners of the soil the interest of the State in mines and mineral substances; enabling the Legislature to guarantee railroad bonds under certain regulations and restrictions; enabling the counties to tax themselves for subscriptions for railroad stock; defining and appropriating a school fund for "the white scholastic inhabitants," and providing that educational taxes collected from persons of African descent should be devoted to the education of their children; lengthening the terms of most of the officers of the State, with an increase of their salary to compensate for the depreciation of the United States currency in which they would be paid for some time at least; and revising and reforming somewhat at length the "judicial department."

The amendments to the judicial department were designed mainly to give completeness to it as a whole. The number of justices of the Supreme Court was increased to five, who should elect a chief justice to preside, and any three of them should constitute a quorum to do business, and extended their term of service to ten years.

The district judges were to hold their offices for eight years. The county court was given a civil and criminal jurisdiction over minor offenses, and over debts not over five hundred dollars. The Legislature was allowed to provide for criminal courts in cities. The jurisdiction of the right of appeal from the several courts were more particularly defined than previously, without any radical change. This Constitution left the government of the State solely in the hands of the white race, by not giving to the freedmen the right of suffrage, or the right to hold office. There was

an effort to enfranchise them by the establishment of what was then termed "impartial suffrage,"—making the test of the right to be, the capacity to read and write. It, however, was very weakly supported, notwithstanding it was recommended by the provisional governor. The great struggles were upon the ordinance disposing of the ordinance of secession, and as to whether it should be declared to be null and void (as an existing fact), or be declared to have been void *ab initio* (as a principle); and upon the ordinance rendering valid certain laws and acts of officers fixing the status of the government during the war as a government *de facto*. Upon the first of these questions the members were very equally divided, with a small majority for declaring the ordinance of secession simply null and void as a matter of fact.

Upon the second question there was a large majority in favor of regarding the government during the war *de facto*. It was a matter of the first importance to have this question determined in this way by the political authority. It was upon this ordinance chiefly (called the omnibus bill from its embracing a series of measures), that the parties were exhibited, that had been forming during the session of the convention. Those in favor of the ordinance were the secessionists and moderate Union men, forming the conservative party in the State. Those opposed to it were the extreme Union men, forming the radical party, or, as they styled themselves, the Union Republican party. The former were in favor of President Johnson's plan of reconstruction strictly. The latter assumed to support the "President and Congress" in reconstructing the State, but finally fell into the full support of Congress in opposition to the President's plan.

An election for State officers under the Constitution, as well as a vote upon the amendments having been ordered to take place on the fourth Monday in June, 1866, so as to complete the full organization of the State; and a meeting of the Legislature on the first Monday in August thereafter, it was thought expedient by the parties to hold caucuses and nominate candidates for the respective State offices.

Ex-Gov. Pease headed the union republican ticket, and James W Throckmorton headed the conservative ticket, which was elected by a very large majority. The gentlemen elected to the bench of the Supreme Court, were George F. Moore, Stockton P. Donley, Richard Coke, Geo. W. Smith and Asa M. Willie, and by them Geo. F. Moore was chosen chief justice. They were all of them good lawyers. Chief Justice Moore had been on the supreme bench during the war. The Legislature met on the first Monday in August, and entered upon the business of passing such laws as were deemed necessary to readapt the State to its changed condition; elected two senators, and made provision for the election of four representatives to the Congress of the United States,

who were elected during the succeeding fall, three of whom, together with the senators elect, presented themselves as representatives of their State, to the Congress at Washington City at the session in December thereafter. The senators elected were, Ex-President David G. Burnet and Ex-Chief Justice O. M. Roberts; the representatives were, Geo. W. Chilton, A. M. Branch, B. H. Epperson and Clabe Herbert, none of whom were admitted to seats in the Congress of the United States.

The freedom of the slaves made it incumbent upon the Legislature to endeavor to regulate the conduct and control of a large body of persons, who had heretofore been provided for, taken care of and governed for the most part by the owners. This had been one reason that had induced the convention to confer criminal and civil jurisdiction upon the county court. The Legislature regulated the proceedings, of said court in the exercise of said jurisdiction so as to have frequent terms. With the same object, an apprentice law, a vagrant law, a labor law, and a law defining and declaring the rigots of colored persons; a law defining persons of color to be all those having one-eighth or more of African blood; and a law requiring railroad companies to furnish a passenger car for freedmen. (The labor act, however, was annulled by a military order, and has not been enforced.)

To encourage immigration to the State, a pre-emption was granted to settlers upon the public domain; and a resolution was passed inviting capital and skilled labor. A law was passed authorizing the records of the confederate courts within the State to be transferred, so as to become records in the federal courts.

Having in view the public improvements, acts were passed creating the office of State engineer; regulating the subject of railroads by amendments and by new provisions; a joint resolution was passed reviving the geological survey that had been suspended during the war. There were also acts passed to collect arms and other public property. A great many private acts were passed, chartering companies for various purposes, including manufacturing, mining, and educational companies. And a law was passed to locate and establish two universities. There were various amendments made to both the civil and criminal laws with a view to improve their operation. The offices of the State were generally filled, the courts were opened for business, and every part of the State government was very soon in full operation under the new Constitution. The United States re-established the mails and postoffices, the federal courts, and revenue collections. The State had done everything necessary to resume its federal relations that was in the plan of the President. Nothing seemed to be wanting but the reception of her Senators and Representatives into Congress of the United States. Under these circumstances the people of the State generally were much encouraged; went to work in all

of the departments of industrial and professional life; and were inspired with the hope of emerging from their pecuniary difficulties and the general despondency consequent upon the fate of the war. This prospect, however, had a drawback. From time to time, while the policy of the President was thus being carried out, the Congress passed acts which looked to a very different plan of reconstruction. Under their slow progress and operation the plan of the President was finally undermined and defeated, and the officers that had been elected by the people, were turned out after having served about one year, and their places were filled by military authority. The Congressional plan was engrafted upon and supplanted that of the President.

AN ADDRESS.

[Drawn up by O. M. Roberts, exhibiting the history and the then existing condition of Texas in regard to its Federal Relations, with reasons why its delegation should be admitted to seats in Congress, to which they had been elected in 1866; which being signed by the members-elect then in Washington City, on the 10th day of January, 1867, was published in the *National Intelligencer*,—the organ of President Johnson's administration—and circulated over the United States. That was the only such address that was ever published, as a sort of protest, by any of the delegations of the Southern States, whose members had been excluded from Congress. It was a protest against being put under military rule, as Congress was then preparing to do.]

To the Congress and People of the United States:

We, having been chosen to represent the State of Texas in the Congress of the United States, and not having been admitted to seats, take this mode of presenting the following facts and views relating to her history, present condition, and Federal relations:

Anterior to the revolution of 1835 and 1836, Texas was a part of Coahuila and Texas in the Republic of Mexico. By the intelligence and valor of its citizens, prompted by an ardent love of freedom, it established a separate nationality, which was recognized by the United States, and by the leading nations of Europe, and which it maintained against the power of Mexico, and the ravages of savage tribes for ten years, exercising the powers externally and internally of a perfect sovereignty,—being a nation among nations. Resting on the Gulf of Mexico for its outlet to the commerce and intercourse of the world, spreading out over a vast and fertile territory, yielding rich harvests of all the varied and valuable productions of the temperate zone, she was an empire within herself, self-sustaining, and capable of the highest material and intellectual development, with all her interests and institutions combined and harmonized under a representative republic.

By annexation in 1845-6, she surrendered her separate nationality to become a State in the United States of America. It was done by the almost unanimous voice of her people, without com-

pulsion from any quarter, without any necessity, impending or prospective,—the alternative being then presented to her of “annexation to the United States,” or “independence acknowledged by Mexico and guaranteed by Great Britain and France.” In that act was exhibited an unselfishness, a devotion to American unity, which challenges comparison with the memorable example of Virginia and other Southern Colonies in the revolution of 1776. Her entrance into the Federal Union, while it caused a great influx of population, and hastened prosperous development, entailed upon her the political agitations common to her sister States. Her remoteness from the center of political power subjected her to many disadvantages, among the most prominent of which was the want of adequate protection against the continuous depredations of savage tribes of Indians on her frontier, by whom thousands of her people,—men, women, and children—were murdered or taken into captivity, and vast amounts of their property stolen from time to time. These shocking barbarities are now being perpetrated, and, within the last eighteen months, have caused the frontier to recede from thirty to fifty miles along the whole border.

This has often made it necessary for the State to place a military force of its own on the frontier at great expense, for which it has never yet been fully reimbursed. In 1861, Texas, in convention, passed the ordinance of secession, and participated with other sister States in the formation of the Southern Confederacy. It was regarded as certain that six or seven of the Southern States would secede. Texas had either to follow, or stand still. To stand still was to be rent in twain by civil war at home. The State was sectionally divided on the question, and nothing but a vote of the people, promptly taken, and acquiesced in by the minority could then save her from the horrors of a civil war, and make her people a unit on one side or the other. Having thus made her decision, the mass of the people sustained the cause of the South during the whole time of the war. Whatever wrongs and outrages may have occurred as amongst themselves, this unity thus produced saved the State from a hundredfold more, that would have occurred without it. Probably, too, it saved the country from the desolation of fire and sword, that swept over other States. It also left it possible, at the close to harmonize society, and adapt it to the changed condition of public affairs, without the distraction of irreconcilable feuds, engendered between neighbors and families during the struggle.

The causes, which led to this great war between the two sections, had taken deep root long before Texas entered the Union. One class of thinkers believed that they saw in the language and spirit of the Constitution of the United States a plain indication of intention, on the part of its framers, that the government should be shaped to the discouragement rather, than the encouragement

and extension of the institution of slavery; while another class believed it was intended to protect and permit the spread of that institution. One class of thinkers believed that in the adoption of the Constitution of the United States, the people of each State, previously distinct, became merged and amassed into one people, for certain purposes embraced within the scope and objects of that Constitution, and to that extent lost a portion of their State sovereignty; whereas, another class thought that the people of each State retained their exclusive identity as a sovereign State, and could, therefore, withdraw the powers delegated to the general government by the State. For it was hardly ever questioned, but that a sovereign power,—the people,—could “reform, alter or abolish” their form of government. But the question was, who, for that purpose, in reference to the general government, constituted *the people*. The Constitution, as it was thought, did not, in express terms, settle either of these questions,—slavery or secession. Construction, analogy, and the facts of history were resorted to for their solution. The greatest intellects of the country, for more than fifty years, had exhausted the arguments on both sides, and had continually diverged the more the longer they debated them. These different constructions necessarily led to radically different results, in the scope and action of the government, and in the modeling of society under it. One was adapted to the progressive ideas of the North, the other to the stationary views of the South. The weaker party sought to escape the consequence of the construction of the stronger, by withdrawing from the Union,—not to prevent the Northern States from retaining the government over themselves with their own construction; but to insure its preservation as to the Southern States as they understood it.

This statement of these questions, that have been settled, is here made for the purpose, and for the purpose only, of disrobing them of numerous irritating adjuncts, and incidents of passion and prejudice; of inviting a liberal and charitable consideration for the motives of the mass of those in Texas, who participated in secession, and to facilitate a more ready comprehension of the reasons why the minority, who did not want to secede so promptly acquiesced in the decision of the majority; by which the unity of the people was secured and preserved. The war was brought on by these questions and their surroundings. The South was overwhelmed by a superior force. Measures of conciliation, pacification, and readjustment, were set on foot by the President, which were responded to, and acted on by the people of Texas by taking the amnesty oath, by amending their Constitution, which was in force previous to 1861, acknowledging the supremacy of the Constitution and laws of the United States, declaring the ordinance of secession null and void, and renouncing the claim of the right of the State to secede, declaring the slaves to have been freed, and

preventing involuntary servitude except for crime within the limits of the State, ordaining the full protection of the equal civil rights and immunities of all persons, irrespective of color, and forbidding the legislature forever thereafter from making any provision for the payment of any debts of the State, or of the Confederate States, contracted during the war. Under this amended Constitution the officers of the State have been elected, supplanting those of the provisional government, and are in the performance of their duties, —the organization of the State government being as complete as it ever was before the war, in full harmony with the Constitution and laws of the United States, and commanding the respect, confidence, and obedience of the great body of the people. The laws of the United States are being executed within its limits, without hindrance or resistance from the people or State authorities. The federal army is on our frontier for protection. The federal judiciary are performing their functions. The United States mails are being carried all over the State. The navy is protecting our commerce. The officers of customs and internal revenue are doing their duty, and the people are paying their duties and taxes, as in other States. What more could be said of the States of New York and Ohio, except that they have their senators and representatives in Congress to speak for and represent the rights, interests, and necessities of their States, and to defend their people from unjust aspersions and misrepresentations, when necessary.

Texas was annexed or admitted into the Union by an act of Congress (December, 1845), which has never been repealed, and she is now performing the duties, and resting under the obligations of a State in the Union, except that one of the departments of the government—the Congress—has not admitted its senators and representatives elect to seats within their respective bodies. They are left to learn the reasons of their non-admission, from the debates and measures proposed in Congress, and from public discussions upon the subject, rather than from any specific legislative action.

The adoption by a State of the amendment to the Constitution proposed at the last session, was not expressly declared to be sufficient to entitle it to representation, and that it was so intended is now denied by leading members of great ability and influence. Texas is charged with disloyalty in not doing it, while it is claimed that she is not in a situation to have done so as being out of the Union. Texas did not adopt it, because she believed its provisions prejudicial to her best interest and dangerous to the public good. But then she had no reliable and sufficient inducement to aid in engrafting principles upon the government, which she did not approve, and to make a sweeping disqualification of so many of her useful citizens, as to make it almost amount to self-imposed degradation. She may yield to such a fate if imposed by others, or possibly under some species of duress, and it is to be hoped

that her people will do it, if they must, with the uncomplaining fortitude and unshrinking manhood that have characterized them in every emergency. But is it not indeed asking too much of such a people to do it themselves?

It is alleged to the prejudice of Texas, that she has elected senators and representatives, who cannot take the test-oath. It is taken as an evidence that her people are seeking to reward those who were formerly prominent in opposing the government. That it is believed is a misconception of the subject; for with the very slight prospect of getting seats, it could not have been regarded as a very valuable reward. In times of great trial, dread and gloom in the political horizon, the people are not likely to select men as mere objects of reward, but far more likely, because they are representatives in fact. The test-oath at most was regarded as a war measure, and was supposed to be founded on the feeling (rather than the principle), that "the preservation of the life of the nation is a public duty, rising above the Constitution and the laws of the United States." Such a proposition is not to be reasoned upon, not being susceptible of argumentation. The feeling, upon which it was founded, has been kept alive far beyond any conceivable occasion for its exercise. If however it is assumed to be founded on any part of the written constitution, it is presumed to be on that clause, which makes each house the judge of the "qualifications" of its own members. If the term here quoted can be construed to mean any thing, other than those prescribed for members in the Constitution, then the judgment, as to general fitness of each house of Congress becomes the standard of qualification, which could be used to perpetuate their principles, after a majority of their electors were opposed to them, and thereby make the agent superior to the principal, which is destructive of representative republican government. It is thought, however, that it was commonly believed that if the State was allowed to be represented at all, the two houses would not retain this rule of exclusion.

It is said that the people of Texas are disloyal and rebellious in disposition still. If that were all, it would hardly in other times, be held to be a good ground for excluding its representatives; for that would establish the precedent, that a majority in Congress could exclude the delegation from a State, whose people, in their judgment, were manifesting a rebellious and disloyal spirit,—which might often be the case in times of high party rancor and strife. But admitting that under the present pressure of disfavor, we have to be judged by that rule, we beg it to be considered, that Texas has no voice of her own in Congress to explain or contradict statements made about the condition and temper of her people. Further, it must occur to any reflective mind, how readily the general tone of sentiment in the states of Massachusetts and Illinois as well as in Texas, might be wholly misunderstood, by consider-

ing only the bad actions and idle expressions, here and there scattered over a large country, and perhaps reported *ex-parte*, with the exaggerations and coloring of prejudiced informers. Where do members of Congress get their information? Not from the messages of the President. Not from the reports of the general of the army. Not from any published reports of the officers of the judiciary or revenue in Texas. Not from our patriotic and vigilant Governor, or other State officers. It is but fair dealing to recollect that there may be disappointed men, and violent partisans, and even good men, as well as those not falling under that class, who are continually seeing things around them in a distorted light. Besides, it is not to be disguised that there is a class of men in and out of Texas, small though they may be (in number) who seem to be endeavoring to bring her people in as bad odor as possible before the public mind. In grave questions, involving the future destiny of a great State, ordinary prudence would dictate a careful examination into the facts, upon which national action is to be based.

We respectfully solicit the most searching and extensive inquiry as to the real facts on this subject.

As part of the representatives chosen by the State, we assert it as our sincere belief that the great body of the people of Texas are loyal to the government of the United States and now have the most intense desire to obliterate all cause of animosity between the sections, and to enter upon a social and material development, that will redound to the power and stability of the whole Union. What motive have they otherwise? During the late struggle, they looked to foreign powers for help. It came not. Disgust and bitter estrangement followed disappointed hopes. An asylum was searched for by many in Mexico, Brazil and other countries. There they found and reported the evils in reality, they were seeking to escape from in anticipation at home. They are looking to no other land as their abode and that of their children. They are entirely satisfied with the experiment of division, and are resigned to their losses and sacrifices. They aspire to arise from the new standpoint, and to be part and parcel in the great progress of their race on this continent. Texas will stand by the flag of the United States against any nation on earth, and the descendants of the heroes of San Jacinto will contest the palm on any field where the country's foe may be met, with the descendants of the heroes of Bunker Hill.

It is said that Northern men, "Southern loyalists" and negroes are badly treated in Texas, and that the laws are so administered as to furnish them no adequate protection. This ordinarily would hardly be considered good ground for the non-admission of members of Congress, being purely a matter of State jurisdiction. But so far from this assertion being true, we are prepared from

personal experience and recent observation to assert that there are thousands of Northern men and Southern loyalists now in Texas who are no more the objects of insult and injury than any one else; and for any offense committed against them they would, as it is believed, find in the courts an impartial redress of them. The judiciary from the supreme bench down, so far as known to us, are men of high character of intelligence, and integrity, independence and impartiality, and would scorn to shrink from the discharge of a duty from considerations of party or political opinion, as readily as they would in any other State or country. As to the negroes, it is not to be expected that the prejudice against an inferior class would be banished in a day or a year; still in the main they are treated humanely and justly by the whites, and when such has not been the case, they have appealed, and are now constantly appealing to our own courts for redress and not in vain.

If society is allowed to adjust itself, as it now is certainly doing, and will do, a public opinion will be formed for the protection of the negro in every respect. When reports of personal injuries, either to blacks or whites are heard, it should be borne in mind that in the Southwest the people are more prone to personal encounters than in the North; that the country is sparsely settled over a vast extent, and that from these and other such causes, the laws punishing offenses of personal violence have never been as rigidly and certainly executed as in the older States. This is not peculiar to Texas. Nor is there any reason to believe, that the laws are not as well executed there as they were before the war, or that there are any more crimes of that character now being committed than were usual before the war. The people of Texas, pursuing their ordinary peaceful avocations, would doubtless be amazed at the exaggerated impressions produced in the North of their alleged enormities against the weaker portion of their community. It is a part of cowardice and not of bravery to concert or encourage a systematic oppression of the weak. How can such a thing be believed of such a people,—a people whose courage has added lustre to the name of Texas, in every field where its flag has floated, from the time of its birth as a nation to the present. Isolated instances of wrong from impulse and passion will occur, and bad men will here and there continue to do wrong no doubt. These are the exceptions, not the rule. During several months after the close of the war, a few negroes were killed in different parts of the State, and other wrongs were committed by bad men, but to those who understand the facts, it is matter of surprise, that there were not ten times as many crimes committed as there were. Upon the surrender of the forces east of the Mississippi river, those west of it regarding further efforts to maintain a separate independence futile, with one accord broke up their camps and departed for their homes, traversing the country in all directions with arms in hand,

and without the restraint of commanders. Several months afterwards a nearly similar scene occurred by the soldiers going to places to be paroled. In the meantime the negroes were declared to be free by military order, many of whom left their homes, and wandered about over the country. There were only a few military posts established hundreds of miles apart. For three months there was no civil officer, who knew that his interference to preserve order would be tolerated by the federal authorities. During this whole period of confusion and disorganization, there was a moral restraint pervading the masses, which so reduced the amount of crime below what might have been expected, as to present the civilization of our people in a light of elevated grandeur, never before contemplated of it. The truth is now, that all classes of persons have gone to work in some avocation with a spirit and energy redoubled by their losses, to improve their fortunes, and to develop the resources of the country, directing their attention more than ever before to factories, railroads, and whatever else will tend to advance their industrial and social interests. In the race of competition in these pursuits, previous differences will be forgotten, passions and prejudices will subside, all classes will find their proper level, and general protection of each and all will be commensurate with the common interest.

It is now proposed as a means of protecting "Southern loyalists," Northern men, and negroes, and of reforming State governments now existing, either directly or through territorial governments, to erect new State governments, based upon the suffrage of the Southern loyalists, and negroes, and upon the disfranchisement and disqualification from office of all those who adhered to and aided in the "rebellion," excepting only those who may be relieved from such disability by Congress. This plan is understood to be proposed by some of the Southern loyalists themselves, and advocated by prominent members of Congress.

It presents an entirely new feature in our affairs, that rises above the mere exclusion of our representatives from Congress. It takes for granted, that the whole question of war and peace are still open. That depends upon the stubborn facts in the past, and no construction can now alter them, and warp the legitimate deductions from them. What are they? The government took measures to prevent the withdrawal of the Southern States, and by the proclamations of the President, and by the resolutions of both houses of Congress, and by diplomatic correspondence with other powers, defined its object in carrying on the war to be for the preservation of the Union, "with all of the dignity, equality and rights of the States unimpaired;" and "not in any spirit of oppression, nor for any purpose of conquest or subjugation." Such an object, so declared, raised up hosts to fight the battle for the Union, and stayed the hand of foreign powers. To carry it out,

Congress afterwards authorized the President to extend amnesty and pardon.

All of the authoritative acts of the general government during the whole war, it is believed, spoke the same language, and under and by that policy the war was brought to a successful close. It was on that ground, and on that alone, that the right was claimed to prosecute the war at all. It was on that ground, that the Confederate government would never be recognized, and therefore no treaty was made with it at the surrender. The manifest intention, with which an act is done, forms a part of the act itself, and gives character to it.

Considering the objects of the war as here shown, and as made known to the world, and acted on throughout, the surrender of the Southern armies, and the subsequent acts of the people of the States of the South, in response to the proclamations and orders of the President, constitute in effect a *pacification, upon terms* as binding upon the good faith of the government, and upon the Southern people, as though they had been stipulated in a treaty. This proposition rests upon the basis, that the President had the power to use the means which he did, and that the people in the Southern States have, in good faith, complied with what was required or expected of them. The soldiers of the Southern army surrendered under the obligation to repair to their homes, and obey the laws of the country. Under a law of Congress, giving the President power under such terms and conditions as might meet his approbation, he issued his proclamation tendering to the mass of the people amnesty and pardon upon their taking an oath in effect surrendering the issues of the war, secession and slavery. Afterwards, through the proclamations the President instituted provisional governments, for the purpose of enabling the people of the States, who had taken the oath, to reform the State governments, and resume their federal relations as States in the Union.

Through this instrumentality, and for such purpose, that being the consideration in part inducing them, the people of Texas responded to the call for a convention, and in convention by delegates assembled did make a political surrender of the questions at issue in the war, and their incidents, as previously stated herein, thereby binding not only those who had been bound by the amnesty oath, but every one in the State, with their posterity after them.

Is it to be held as nothing, that a people, who had espoused cherished principles of government, and had attested their sincerity in a struggle in camp and field for four years, should by affirmative action surrender them under the solemnity of oaths and constitutions, and thereby deprive themselves of the privilege in conscience and right, to revive them, should an opportunity in future present itself? They did it in good faith, and did it not for the love of the thing itself, but upon an obvious consideration,—to be enabled

thereby to readjust their State government, and to restore their federal relations in the Union.

The President had a right, we believe, to effect a complete pacification upon such terms. Had it been regarded doubtful we were in no situation to call it in question without great disadvantage to us. It would have been denounced as evidence of an incorrigibly rebellious spirit, if we had refused to take the amnesty oath, or assemble in convention. But the President had the power, we think, not that he is the government, any more than that Congress or the federal judiciary is the government, for while all these departments constitute the government, each one of them represents and binds the government, when acting within the scope of its authority.—the Congress to prescribe the rules of action, the President to execute them, and the judiciary to construe and enforce them, when brought within the scope of its jurisdiction. It is not to be denied that the war was prosecuted on the theory of the government, that a State had no right to secede, and that the ordinances of secession were utterly void and of no effect. Under no other view could force have been rightfully used to prevent secession. Under this view the President needed no new rule, in view of the declared objects of the war. He simply held the Southern States in subjection to his military authority, until they voluntarily embraced the amnesty and pardon, which Congress had authorized him to tender them, and conformed their State governments to the results of the war acquiesced in, the extension over the country of federal authority in every department, military, financial, postal and judicial.

Had the people of the Southern States been obstinate, and refused to organize their State governments, and resume their Federal relations, some legislation might have become necessary, or had the Congress been in session, it might, or might not have prescribed some additional or different rules, for consummating the pacification, and restoring the Federal relations of the States. But the fact that the President accomplished it, without the necessity of any additional law to aid or guide him, makes it equally binding on all the departments of the government, as though each had participated in it.

Texas, having in good faith performed everything required of her, in the pacification, and resumption of federal relations, awaits the result with patient solicitude. If the war was not really waged in the "spirit of oppression and for the purpose of conquest and subjugation" she may well hope that she has done enough to entitle her to the "dignity, equality, and rights" of a State within the Union.

This new project ignores or disregards all these considerations, and seeks to make the government now, nearly two years after the cessation of hostilities, and after the pacification has been long

completed, and the Federal relations all resumed, except representation in Congress, adopt a new policy by treating us as a subjugated people, without laws, without government, without State boundaries, without public property of any kind, without social organization, with our lives and property at the will of the conqueror.

It is believed, and respectfully submitted that such a thing is impossible without a perversion of facts as notorious as the war itself, without a breach of faith to the brave soldiers, who conquered us to preserve the Union of the States, without a breach of faith to the nations of Europe, who were assured that the objects of the war was only to preserve the Union, and who under such assurance saw us overwhelmed, and, should it be regarded as a matter of any importance, without a breach of faith to the Southern people, who surrendered their arms, and the principle at issue in the war, and complied with what was necessary to secure peace and restore their political relations, with a full knowledge of and in reference to the avowed and notorious objects of the war on the part of the United States. Should the government of the United States change its whole policy on that subject, regarding the war as still progressing, as it must do, and demand, either in express terms or in effect, of the people of Texas such a surrender,—the most abject known to war,—“a capitulation at will,” Texas may and doubtless will have to submit to it. But it should be known and declared to the world to be a new surrender, that will cancel in conscience all of the obligations assumed in the one she has hitherto made. Before breaking asunder such ties and plunging the whole country into such confusion, distrust and dissatisfaction, as we fear must ensue, let us most respectfully beg a patient and dispassionate examination of the whole subject in all of its bearings and consequences. The Constitution should be again unrolled, and clear and definite ideas fully grasped upon the momentous questions now pending. The proposition presupposes that Texas is dead, politically defunct! Texas was carved out of the dominion of Mexico by the swords of the patriots of '36, who gave it shape and form, and breathed into it the breath of life, and it became an organized body, and an independent political society. Annexation did not destroy its corporate existence an hour or a day. A temporary suspension of her officers, and a substitution of others by the Provisional government, with the same powers and duties as those displaced, and whose acts were afterwards recognized by the convention, could not destroy its corporate existence. Under the strongest theory of the federal government, as expounded by such jurists as Story and Webster, it has always been admitted, that a State on entering the Union, retained a portion of its sovereignty for the regulation of its own local and domestic concerns, upon which its State government is founded.

Those powers of the of the State of Texas, thus reserved, were not in any way affected by loss or gain during or at the end of the war, because the controversy was not about them, but about the powers that had been delegated to the United States on annexation, and as to whether they could, or should be withdrawn, and vested in another confederacy for their exercise.

So equally on the doctrine that a State could secede rightfully or wrongfully, the State government still existed, at the close of the war,—though a different mode of readjustment of federal relations might have been necessary.

Again, the use of the State government in hostility to the general government does not of itself destroy the State government any more when it fails than when it succeeds. The existence of a government is a matter of fact, and not of legal fiction. Nothing but the *conquest and subjugation*, evidenced in some way, as being intended and declared by the United States, and submitted to by Texas, could annihilate the State. That can hardly be assumed to be the case. If Texas may now be demolished as a State, the precedent is set, and the principle is established that the general government may, for such acts as the Congress may deem sufficient to have forfeited its political existence, set aside a State government, and reduce it to a territory.

The danger of such a principle to republican freedom is above description, and words will fail to express the dismay, horror, and reckless despair of the people of Texas, if they should have the misfortune to live to see the power of the United States used in pulling down the venerated pillars, and in digging up the deeply settled foundations of their State government, endeared to them by its own beauty and merits, and enshrined in their hearts by a history, and a name, of which her sons, whether in freedom or in bondage, will ever be proud.

As to the disfranchisement and disqualification of "rebels" in Texas in this scheme, it is only necessary to bring to mind the universal truth, that love begets love, kindness begets kindness, generosity begets gratitude, and it cannot be pretended as yet, that the people of Texas have advanced high enough in the sliding scale of Christian civilization as to be above the murky atmosphere of hate. Too many of us will fail to love those who may despitefully use us. It is the part of wisdom to act upon the fact, that this is no mere insurrection or petty rebellion of a district, that was contemplated in the Constitution to be punished by prosecutions as therein prescribed. That is found impracticable, because it was a great civil war of sections, embracing whole States, and the stamina, intellectual and physical, of the great body of the people in each of these States.

Why is it that the Irish will not adopt English civilization, and pride of country? Because they hate England for its traditional op-

pression of Ireland. Surely that lesson ought to be known without learning it by bitter experience in America. The way is still open to keep us one people, rising out of this life and death struggle, with common motives and aspirations for the prosperity and the glory of the common country, and not bound by the fetters of cold iron.

Christian charity and liberal statesmanship point the way. We most earnestly desire their exercise toward our people.

They are in a tone of mind now to appreciate the necessity of progress, so as to keep pace with the safe advances of the age, in intellectual, social, material, and political development. Their faces are already turned in that direction with the hope that a powerful and magnanimous government will neither thrust them back with its frowns and blows, nor drive them along with a blinding rapidity.

Texas, having done what she deemed to have been her duty, and still being willing to do it, leaves the responsibility of the future upon those who have the power to shape the destinies of the country.

Washington, January 1st, 1867.

O. M. ROBERTS,

D. G. BURNETT,

Senators-elect from Texas.

B. H. EPPERSON,

Representative of 2d District.

A. M. BRANCH,

Representative of 3d District.

GEO. W. CHILTON,

Representative of 1st District.

NOTE.—This address was highly appreciated by the President and members of the Cabinet, and received the general commendation of the Southern press, including that of Texas, but it had no influence upon the Congress of the United States.

A PUBLIC LECTURE IN THE UNIVERSITY.

THE HISTORY, OBJECT AND EFFECT OF THE RECONSTRUCTION OF THE ELEVEN SOUTHERN STATES BY THE CONGRESS OF THE UNITED STATES—A REVOLUTION IN A TIME OF PEACE.

History is a recorded account of what the people are doing in a country during any given period. What they are then doing, is dependent upon the rules of action, prescribed or tacitly permitted by the government. This does not include a time of war; for wars have their own history, which is much the same in all ages. Great national wars are stops in history, when the rules of action in one period cease to prevail, and others commence to be enforced. The war may come to an end without completing the revolution for which the war was commenced and carried on. In that event the revolution in the rules of action must be completed afterwards, by the political action of the government. Such was the result of the great war between the American States.

The object of this discourse is to show how the revolution was sought to be completed by the Congressional reconstruction of the eleven Southern States, inaugurated in March, 1867, nearly two years after the close of the war.

President Johnson's plan of reconstruction, which had been previously carried out, except only by the exclusion of the Southern members of Congress, was based upon the views of the nature of the government of the United States, and of its relation to the States, that had long been entertained by some eminent statesmen, which involved the idea of a divided sovereignty between the general government and that of the several States; each resting directly upon the sovereignty of the people; the general government upon that of the whole of the people of all the States, and the government of each State upon that of the people of each State, constituting together as a whole, a compositive government, and forming an indissoluble union of all, and, at the same time recognizing sovereign reserved powers of the States, bound together alone by the Constitution of the United States. It was exactly under this view of the system of government, that President Buchanan contended (while the secession of the Southern States was taking place), that a State had no right to secede, but that the Con-

stitution of the United States did not invest the federal government with the power to forcibly coerce a State, and make it preserve its federal relations, when that State, acting by its constituted authorities, had voluntarily withdrawn them. Others, however, entertaining the same general view of the nature of the government, thought that the Constitution did confer upon the general government the power to coerce the people of a State by force, however unanimous their action might be in sustaining the State authorities in the effort to withdraw their federal relations. They regarded the action of any convention or legislature, directed to that end, as simply void, leaving the Constitution and laws of the United States still locally in force, as though no such action had been taken, and regarding those persons who might act by the pretended authority of such convention or legislature, in preventing the laws of the United States from being enforced in such States, as criminal offenders, and liable to punishment according to the grade of their offenses. Those persons in such State, who might not aid or take part in such conduct, would still be under the protection of the Constitution and laws of the United States, entitled to their full rights under them, as citizens of the United States, and of course not liable to any punishment, or forfeiture of rights or privileges.

All that could be necessary in such a case was to over-awe or take forcible possession of the insurgents, bringing them to trial for their breaches of the criminal laws of the land, because the laws of the United States are to be respected and obeyed, and thereby preserve the Union. It was in this way that some statesmen before the war believed the general government had the power under the Constitution to preserve the Union. It was under this view, that Mr. Lincoln, when he became president, undertook to preserve the Union. It was under this view avowedly, that Congress voted men and money to suppress the so-called rebellion. It was under this view, that a desultory war with fire and sword, and the freedom of the insurgent's slaves, were vindicated before the civilized world. It was under this view alone, that it could be said, that the insurgents were endeavoring to destroy the government of the United States. It was under this view, that President Lincoln, under an act of Congress, offered amnesty and pardon to those who would cease their hostility. It was under this view, that thousands of Southern men would take no part in the war, that they could avoid. It was under this view, that the Southern armies surrendered, and their officers and soldiers were paroled. It was under this view, that President Johnson issued his proclamation of amnesty and pardon, freeing the mass of those who were engaged in the war on the part of the South, from punishment and forfeiture for their alleged treasonable acts, upon such a condition as would secure the repudiation of the right of secession, and of the relinquishment of

slavery on the part of the Southern States, in the readjustment of their federal relations, withholding a pardon from the leaders and some others, except upon special applications, some of whom, under the same view, were actually prosecuted for treason, and others had their property confiscated.

In such a struggle as America witnessed during four years,—the first truly American war,—bearing a proportion to its grand rivers and lakes, its great plains and mountain ranges, and its vast outspread continent, embracing numerous States, teeming with population, wealth and resources, and closing with one million of federal soldiers in the field to arrest the insurgents, it would have been astonishing, indeed, if the old ideas of government had not been much expanded, and new ideas wrought out that had never before been acted on, if even conceived by statesmen. Such was the case, and we must have some information of them before we can properly understand the congressional plan of reconstruction, and the reasons of it.

The great new idea, soon matured and put into activity by the war in the North, was that the whole of the people, in mass, of the United States, as a body corporate, had a living organized existence, founded upon a unity of race, styled the “life of the nation,” which was a principle of cement and union binding the whole people together, underlying the Constitution, and above all constitutions. The general government, aided by the Northern States, acting through their governors and legislatures, and actively sanctioned by the pulpit, and the press, assumed the high duty of preserving the “life of the nation,” and everything they did, and all the means that they used to accomplish that end, were sanctified thereby. All those citizens, who opposed the war in the North were held up to infamy as its enemies. Some of them were imprisoned, and others banished, and opposing presses were silenced. Its first great conquest was in conquering Northern opposition, and arousing and concentrating public opinion to the high resolve of sinking the whole country in ruins, if necessary, in the effort to preserve “the life of the nation.” The first conquest being made at home, the rest was more easy. Bounties by the general government, by the States, by the counties, by cities, and by towns (amounting in the aggregate, in some places, to eleven hundred dollars), were given to buy up soldiers to fight the battles for the preservation of “the life of the nation.” To sustain the currency, the treasury notes of the United States were made a legal tender, the same as gold and silver. Bounties were given to internal improvements on a grand scale. The expenditure of a million of dollars per day was not regarded as extravagance. Tariffs were raised to a height never before known (averaging perhaps as much as 60 per cent upon the original cost of the imported article). An internal revenue tax was levied upon most

of the products of the country. Three billions of public debt were incurred. When the war closed the government was found in the hands and under the influence of those, for the most part, who were not interested to diminish the enormous expenditure, but rather to find the means, as they did, of merely diverting it to other purposes.

This will suffice to convey a slight view of the expansion of the views of the statesmen, who were participating in the government of the country, when the collapse of the Confederate government took place, which caused them to mount still higher for a still broader view of their duty, in giving direction to the great events of the country. They had not provided for that event any plan in accordance with their expanded views, and therefore none could readily be agreed upon. One by one they began, though slowly, to ascend to a higher point of political observation, drawing each other up all the time, until finally they beheld dawning upon them the vision (dreamed of only before) of the great consolidated republic based upon universal political equality, without distinction of race or color,—the self-protective, self-developing empire of America, with a central controlling head. With such a vision in prospect, the plan promptly inaugurated by President Johnson, during their period of hesitancy, seemed to them to be a lame expedient; that was halting, by traveling backwards upon the old-fashioned contracted ideas, with which they had set out in the war themselves, but not at all in harmony with the magnificent conceptions of the new era of progress that had dawned upon the country.

The leaders in Congress very soon perceived that they had another war to fight,—this time a political war. As before, the first great conquest must be made at home; for the public opinion of the North, and much less that of their coadjutors, the "Southern loyalists," had not reached this grand conception, and had to be drawn up to it by agitation. Much still had to be done. This required both delay and agitation. Delay was soon attained by arraying Congress against the President, and keeping the Southern members out of Congress. Agitation was kept up by a paper war upon the South for years, after it had grounded its arms and sought peace. We were represented still to be in a state of semi-rebellion; and their coadjutors in the South, taking their cue, helped them with reports of murders and seditious outrages, that enabled them to keep up the delusion upon the Northern mind, that we were actually, in sentiment at least, in a semi-state of rebellion, and were not to be trusted with any participation in the government, and that there were no loyal people in the South, except the negroes and the few white loyalists. Such the Northern people were made to understand and believe was our true condition.

This was necessary to excuse or justify the extraordinary meas-

ures necessary to accomplish the object, sought to be attained. That object was the absolute sovereignty of the government of the United States, with the powers of the States subordinated to its action, and subjected to its supervising control, to a degree never before provided for, or exercised. To attain this object, it was necessary to establish a universal citizenship and consequent allegiance to the government of the United States, to free the negroes and secure them in equality of rights, and to place the general government in more complete supremacy over the States, so as to enable it to protect its citizens and others from any action of the States, that it might deem to be violative of their rights. This required such amendments of the Constitution of the United States as would negative the doctrine, previously held in the Northern States, of a divided sovereignty between the States and the United States, as well as that of State sovereignty, as held by the States in the South.

The amendment of the Constitution in December, 1865, prohibiting slavery in the United States, and the protection of negroes by troops stationed in the Southern States, left the negroes still without the right of suffrage. The Supreme Court of the United States had previously decided, in the Dred Scott case, that negroes were not, and could not be made citizens of the United States. That impediment to universal suffrage must be gotten rid of. In the summer of 1866, after all of the Southern States had reorganized under the plan of President Johnson, a convention, composed of his political adherents, was held in Philadelphia, then styled "the conservative convention," in which resolutions were passed approving his plan of reconstruction, and announcing the view, that if Congress excluded the members-elect from the eleven Southern States, it would not be a constitutional body.

The resolutions were presented to President Johnson by a committee, headed by Reverdy Johnson, Senator from Maryland, and it was understood that they reflected the views of the President. At once a movement was set on foot for the organization of an army all over the Northern States, styled "the army of the Republic," to be in readiness, if necessary, to sustain the Congress as against the President and his political adherents. This greatly aided in arousing public sentiment in the North in favor of the Congress, and when it met in December, 1866, it was given a formal reception at the capitol by a great multitude of people, with congratulatory speeches, and the display of flags, and other demonstrations of rejoicing, more like the return of a victorious army than the convening of a legislative body. It was then currently estimated, that Congress was backed by a million of troops, organized in the "Army of the Republic."

The Congress, then confident of its absolute power, proceeded to remove the impediments in its way of accomplishing its objects.

President Johnson was impeached, and tried for high crimes and misdemeanors; and although the impeachment failed, he was rendered powerless. In order that his plan of reconstruction might be set aside, an act of Congress was passed (over the President's veto), on March 2, 1867, entitled, an act to provide for the more efficient government of the rebel States, with a preamble as follows: "Whereas, no legal State governments, or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and, whereas, it is necessary that peace and good order should be enforced in said States, until loyal and republican State governments can be legally established; therefore,

"Be it enacted, etc., that said rebel States shall be divided into military districts, and made subject to the military authority of the United States, as hereinafter prescribed," etc.

There were five military districts, one of which was composed of Louisiana and Texas, over which a general of the army was appointed, and assigned to duty, with a competent military force to sustain him in the discharge of his duties. It was made his duty to protect the rights of persons and property, suppress insurrection, disorder, and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals, 'and (it was provided) to this end, he may allow all local civil tribunals to take jurisdiction of and try offenders; or when, in his judgment, it may be necessary for the trial of offenders, he shall have the power to organize military commissions or tribunals for that purpose," etc.

It was further provided, that until the people of the rebel States shall be by law permitted representation in Congress, "any civil governments which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States," etc. And further: "No person shall be eligible to any office, under any such provisional government, who would be disqualified from holding office, under the provisions of the third article of said Constitutional amendment." The amendment referred to was the fourteenth, that had already been introduced in Congress, and which in its third article "prohibited any person from holding office, who had (personally) held an office in which he was required to take an oath to support the Constitution of the United States, and shall have engaged in insurrection and rebellion against the same, or given aid or comfort to the enemies thereof."

By a supplementary act of the 19th of July, 1867, the commanders of districts were authorized, at their discretion, to remove all civil officers in the provisional governments, and to appoint others to fill their places, and the removals and appointments of such officers, that had been previously made, were confirmed.

By thus reducing the Southern States to military dependencies, with no representation in Congress, it would become easy to have the fourteenth amendment adopted by the Northern States, in the absence of the Southern States voting against it, which they would have done and defeated its adoption, if they had been allowed to vote on it.

The fourteenth amendment, though it was introduced in Congress as a part of the plan of reconstruction, before the passage of the law reducing the Southern States to the condition of territories (in which it is referred to as a proposed amendment), was finally recognized as part of the Constitution on the 26th of July, 1868. Sections 1 and 5 of said amendment are as follows:

Art. 14, Sec. 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Sec. 5. "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

The first sentence is intended to establish United States citizenship with personal allegiance to its government; the second to protect its citizens in their privileges and immunities from abridgment by any law of a State; the third, to place the legislative and judicial actions of the States, performed under their own constitutions and laws, subject to the supervising control of the general government. Section 5 changes the rule, originally prescribed in article 1, section 8, clause 19 of the Constitution, for the exercise of implied powers, from such as were "necessary and proper" to such as are "appropriate,"—thereby leaving it in the discretion of Congress to pass such laws as may be deemed appropriate, whether "necessary" or not for the enforcement of the 14th amendment.

This amendment was designed, doubtless upon full premeditation, to place the government of the United States in the position of the one great consolidated American republic, with subordinate and auxiliary States, for such local administration as, from time to time, it was not deemed expedient to be assumed by the superior government; provided, however, such local administration shall not abridge the privileges or immunities of the citizens of the United States, and shall not deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,—the superior government assuming the incidental power to determine what ac-

tion of the State authorities would constitute such deprivation and denial.

This 14th amendment, together with the 13th, of December 18, 1865, freeing the negroes, and the 15th, of March 30, 1870, conferring the right to vote upon the negroes equally with the whites, were designed to effect a complete revolution in the fundamental structure of our system of federal and State governments.

Under the Constitution, as it was originally adopted, a person was a citizen of the United States, only by being a citizen of a State. There was such a thing as an interstate citizenship, by the provision "that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." This was in effect a mere treaty stipulation as between the States, inserted in the Constitution. The Congress was given the power "to establish a uniform rule of naturalization . . . throughout the United States." By this, foreigners would become citizens of any of the States, in the same manner and on the same terms as natives. There was no clause in the Constitution, defining citizenship of the United States. Hence many officers in the service of the United States, upon the breaking out of the war between the States, regarded their primary allegiance due to their own States; and on the same principle, many Southern men, who were opposed to secession, felt in conscience bound to support the action of their States. President Davis, at the close of the war, was indicted for treason to the United States. To make the prosecution successful in a court of law, it was necessary to establish his allegiance to the government of the United States, by some provision in the Constitution, under which, his acts in defense of his State could be made treasonable. After a long confinement the prosecution was dismissed by the federal court, over which Chief Justice Chase of the Supreme Court presided. It can hardly be presumed that it was done from any personal favor to him, or from a want of a desire to make an example by his conviction, if it had been thought to be certainly practicable. The trial by a jury in a court of law might have reversed the judgment, rendered in "the trial by battle." It was evidently thought by those in authority, that it was better not to risk it. This first section of the fourteenth amendment was most artfully devised to effect a radical change of citizen allegiance, from this State to the government of the United States, and to merge the sovereignty of all the States into absolute sovereignty of the government of the United States. This was a new conquest over the people in the South, while they were held in duress, three years after they had laid down their arms and sought peace,—the subjugation of a powerless people as upon a surrender and capitulation at will, that never was made by their armies in the field, and which never was, and would not have been imposed by the brave soldiers, who fought their battles, and

overpowered the South. It is even more than that; for it secures the centralization of power in the general government, that may ultimately destroy the reserved rights and liberties of the people both North and South. These extraordinary measures were claimed to have been adopted under that clause of the Constitution which says: "The United States shall guarantee to every State in this Union a republican form of government." So at least it was held in the Supreme Court of the United States, in the case of the State of Texas vs. White and Chiles, decided in April, 1869, in which it was said, "The power exercised by President Johnson was, supposed, doubtless to be derived from his constitutional functions as commander in chief."—"But the power to carry into effect the clause of guaranty is primarily a legislative power and resides in Congress." Notwithstanding this assumption, the theory upon which the war was carried on by the Northern States was, that it was only necessary to suppress the opposing forces of the Southern States to preserve the Union, and that those States were still in the Union, as soon as they might peacefully resume their Federal relations, to the United States. In the case referred to, it was decided that the State of Texas was a State within the Union, competent to bring a suit in the Supreme Court of the United States, as a State, against White and Chiles on the 15th of February, 1867, when Governor Throckmorton was Governor of the State, organized under the President Johnson's reconstruction, with all of its Federal relations resumed and in full operation, except only the exclusion of its members of Congress, by the action of Congress alone. The government of Texas at that time as organized under the amended Constitution of 1866, was republican in form, by all of the tests that had ever been applied to any of the States, North or South. The fact that the negroes had been declared free, by the amendment of 1865, and by the Texas amended Constitution of 1866, without giving them the right to vote, was no ground for assuming that the State government then was not republican in form, for free negroes had been excluded from voting in most if not in all of the States previously. The true ground was not that which was alleged in the preamble of the law of Congress of March, 1867, that "no legal State government or adequate protection of life or property now exists in rebel State" (naming eleven of them in the South). The government of Texas was being administered under the Constitution of 1845, with such amendments as were necessary to adapt the State to its changed condition in the Union, passed by the people through their delegates in the convention of 1866, and approved by a vote of the qualified electors of the State, in which the previous claim of the right of secession was distinctly renounced, and the laws, both State and federal, were being enforced under Governor

Throckmorton's administration, as promptly, and efficiently as they had ever been in Texas.

This renunciation of State sovereignty by the State was not satisfactory to the advanced ideas of those in power, because it might be resumed by the same power in the State that renounced it. State sovereignty under which the right of secession was claimed, must be utterly destroyed, so as to put it out of the power of the people of the State to reassert or claim it by their own action. Moreover, it was not loyal in its political organization, as its officers were not republicans, as its reconstruction was designed by Congress they should be, which was meant by the addition of the word "loyal," to the words in the guarantee clause "republican in form," as expressed in the Constitution. The officers in the Throckmorton administration were generally Democrats elected by white voters alone.

Those were the leading reasons why it was necessary to demolish the government in Texas, and those in the other Southern States, erected and in peaceful operation as reconstructed by President Johnson, and to place them under military rule as subjugated territories. This fundamental revolution in the relation of the States to the government of the United States could not be accomplished otherwise than by depriving the eleven Southern States (then more than one-fourth of all the States), of all participation in the government. The end sanctified the means in the view of Congress. The way was thus made plain to adopt the fourteenth amendment, that had been introduced in Congress in June, 1866, which, though not adopted by the States still in the Union, and declared a part of the Constitution, until July 28, 1868, was nevertheless, while still only a proposed amendment, made in force as part of the law of reconstruction, passed over the President's veto on March 2, 1867.

The first sentence in section 1 of the fourteenth amendment created the citizenship to the United States. A person thus made a citizen is thereby a unit in the aggregate mass of people, in all of the States, that constitute the sovereignty on which the government is based, and consequently he owes allegiance to that government. This was supplemented by the first part of the next sentence that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Though the Supreme Court has not defined the extent to which this provision may be made to control the action of the States, it certainly enables the general government to interpose its power to protect its citizens against the operation of any State law, that it might deem an abridgment of their privileges and immunities.

The balance of the sentence extends its protection, still further, to any person, whether a citizen or not, when it shall deem that a

State is acting so as to deprive him of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. This provision, for the protection of life, liberty, and property, is contained in the Constitution of the State of Texas, and its government is bound by it, both in making and executing its laws. Still, its action, either legislative or judicial, would not be final, but would be subject to revision by the Supreme Court of the United States, at the discretion of Congress to make it so.

The Constitution originally placed limitations upon the action of the States, which were enforced by the supervision of the Supreme Court, such as relating to emitting bills of credit, making anything but gold and silver a tender in payment of debts, passing bills of attainder, ex post facto laws, or laws impairing the obligations of contracts; also provisions requiring that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States, and that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, all of which limitations have been liberally extended by construction. No one of them, or all of them together, are calculated to thrust the supervision of the general government so thoroughly into all of the internal operations of the State government, as these provisions of the first and fifth sections of the fourteenth amendment. To these also may be added limitations upon the actions of the States by the constructions placed upon the expressed and implied powers conferred upon the Congress and other departments of the government, such as the power to lay and collect taxes, duties, imports and excises, to pay the debts, etc., to borrow money on the credit of the United States, to regulate commerce with foreign nations, and among the several States, and with the Indian tribes, to establish postoffices and post roads; and also the provision that the Constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby anything in the Constitution or laws of any State to the contrary notwithstanding. This clause was construed by the Supreme Court to establish the supremacy of all the measures adopted by the federal government to the extent, that all action of a State interfering with them is void, although its action might be in accordance with its own Constitution.

Formerly when a question was involved in any case originating in a State court, if it was not removed into the federal court before trial, the revision of the Supreme Court was affected by a writ of error to the court of last resort in the State after a final decision of the case. That has been changed in criminal cases. The Con-

gress in 1867, in anticipation of the adoption of the fourteenth amendment, previously proposed in Congress, passed a law as part of the reconstruction measures, authorizing the federal courts to issue the writ of habeas corpus in any case where a person is in custody by any State authority, wherein the imprisonment is in violation of the Constitution, or of law, or of a treaty of the United States, and the act of Congress in 1885 gave an appeal in such case to the Supreme Court of the United States. After the issuance of that writ, all proceedings taken by State authority were declared to be null and void.

This remedy is obtained by the party presenting to a federal court a sworn petition, stating the facts concerning the petitioner's detention, and the writ must be granted, unless it appears from the petition itself that the applicant is not entitled thereto. A refusal to grant the writ of habeas corpus, upon the petition therefor, makes a case subject to be appealed to the Supreme Court of the United States. Under these provisions, a prosecution of any person by a State, wherein a federal question may be claimed to be applicable, may be arrested, and suspended for supervision by the federal courts at any stage of the proceedings, from an arrest under a warrant to a final conviction, both inclusive, which has been practically demonstrated, as may be seen by reference to the Supreme Court reports.

By the fourteenth amendment the rights of magna charta are re-established in the States by the Constitution of the United States, to be enforced by the government of the United States, whenever, in the opinion of the federal courts, the State government fails to do it. In a case involving a law of a State, wherein the Supreme Court of the State has already adjudged it to be constitutional, the Supreme Court of the United States have held that it will follow the decision of the Supreme Court of the State. But it may some time happen, that the question has not been decided by the Supreme Court of the State, in which event, the Supreme Court of the United States must decide the question according to its own judgment. Since the adoption of the fourteenth amendment, and the statutes to enforce it, the Supreme Court of the United States has been crowded with cases of both a civil and criminal nature, which is likely to be increased rather than diminished in the future. In very many of those cases relief was refused by the Supreme Court, which shows, that the facility of obtaining jurisdiction in the federal court, when it is claimed, causes the action of the State authorities to be suspended, as well where there is no good ground for it, as when there is. If we should endeavor to survey, in one comprehensive view, the numerous limitations upon the actions of the State, and the various grounds for the supervision of their legislative and judicial action, which have been herein collected and referred to, we will be prepared to appreciate

to what a subordinate condition the States have been reduced, with the right of sovereignty annihilated, and they made powerless to resist any aggression upon their supposed reserved rights, that may be made by the general government in the exercise of its supremacy.

Reserved rights! Reserved rights of the States! These words were of frequent use once. They are nearly obsolete now. It is simply absurd to say that a State has reserved rights, when its exercise of them is subject to the control of another power, and when it has no means of preventing that control. Limitation or restriction, whether by express provision, or by implication, or by construction, is control. Supervision, when relief from State action is granted, or when it is not, is control. Indeed, this control by limitation and by supervision now extends to every important subject of legislation, and judicial action in a State, relating to the rights of persons and of property, in which it can be claimed that a federal question is involved. The only protection that a State has left for any right, is in the election of its members of Congress, and of electors for President, except that which is furnished by the decisions of the Supreme Court, in declaring laws of Congress unconstitutional; or otherwise that the federal question presented is not operative to control State action, and that body is itself a creature of the President and the Senate. That court, though it has often protected the remaining rights left to the States, acts on the rule, that when it is doubtful whether a law of Congress is constitutional or not, the law is maintained by its decision, which is itself one of the means of increasing the power of the general government as against the States. How very small the protection to the rights of the State is, derived from the privilege of electing its members of Congress and Presidential electors, may be estimated, when it is considered, that Texas is only one in a large number of States, that its peculiar interests and principles of government are different from those in the majority of the States, and that Congress is no longer a deliberative body, governed by argument and consultation, and by the free and conscientious decision of each and all of its members, but is governed by party caucus resolves, determined outside of the halls of legislation. Under such a mode of procedure a mere majority in caucus of one political party may dictate measures, contrary to the judgment of the majority of all of the members of Congress, thereby making a minority government, and placing the good of the party above the good of the country.

Having shown the object and effect of the reconstruction laws and constitutional amendments, in increasing the subordinate condition of the States, it remains to be shown how these measures were carried out in Texas.

During the period of reconstruction, it was contemplated that

the State provisional governments should be administered, by loyal officers who could take the prescribed oath of office (commonly then called the iron-clad oath), and by military commissions, acting as courts when deemed necessary. This was effected by the powers given to the military commanders to remove those in office and appoint others. This was done in Texas in the manner as follows:

Headquarters, District of Texas, Galveston, April 15, 1867, by special order No. 60 Maj. Gen'l Griffin forbade the election of officers by the people.

At headquarters 5th military district, New Orleans, La., July 30, 1867, a special order No. 105 was issued by Major General P. H. Sheridan, removing Governor Throckmorton as an impediment to reconstruction, and appointing E. M. Pease Governor of Texas in the provisional government. Major General Griffin, headquarters at Galveston, August 27, 1867, issued order No. 160, removing S. Crosby, Commissioner of the General Land Office; W. L. Robards, Comptroller; M. H. Royston, Treasurer; W. M. Walton, Attorney General.

Major General Griffin, on the 10th day of September, 1867, issued an order No. 169, removing the following judges of the Supreme Court from office "on account of their known hostility to the general government," Geo. F. Moore, R. Coke, S. P. Donley, A. H. Willie, Geo. W. Smith, and appointing in their places E. J. Davis, C. Caldwell, Amos Morrill, Livingston Lindsey, and A. H. Latimer. Very soon followed orders removing district judges in many if not in most of the districts, county judges, sheriffs, clerks, and other officers in the different counties, and appointing their successors.

To men who had been reared and lived in a free country, to whom constitutional government was endeared as the protection of that which was worth living for, accustomed to be governed by officers elected by the free choice of themselves as qualified voters, here was an astounding and harrowing spectacle in Texas,—in Texas, whose sons, by their valor and love of freedom, had added lustre to the American fame, whose patriots and statesmen had snatched freedom from the grasp of tyranny, and planted it in her broad domain, and afterwards added that broad domain, with all its grand historic achievements and magnificent natural wealth, to the American Union, a free, unbought tribute to Anglo-American unity on this continent. That spectacle was the people's government, peacefully erected and being peacefully administered, expiring quickly in view of a drawn sword, and a substitute spoken into life by a military officer. This substitute was composed of officers selected because of their opposition or antagonism to the mass of people they had to govern. This tragic act of power, exerted over a disarmed and helpless people, will stand, in all future history, a

monument commemorating the final end of all State sovereignty in this country.

Such was the government imposed upon the people of Texas for several years, to train them into the knowledge of how to establish a loyal and republican government in Texas; that being the object of it, as expressed in the reconstruction act of Congress of 1867.

These officers, not one of whom, perhaps, could have been elected, had the mass of the people voted who were formerly qualified voters, proceeded to administer the government by holding the courts under the laws of the State. In this we had a most notable example of the incompetency of a government placed over a people to govern them without their consent, and without the confidence of the people to give it their cordial support. It was the case of the government against the people, and the people grudgingly submitting to what they could not help, with no feeling of responsibility for its acts, whether good or bad.

Military commissions were also instituted to try defendants for alleged criminal offenses. They, in their proceedings, occupied a sort of hybrid position, between a criminal court and a court martial. Being composed of army officers, their want of legal knowledge was somewhat compensated by their sense of honor and gentlemanly deportment. The petty military officers in the freedman's bureau played the tyrant on a small scale, in the effort to protect the negroes from outrages committed by the whites. To all this may be added the fact that United States troops,—regiments, companies, or squads—were stationed in different parts of the State to sustain the government, and to hold the people in duress to secure their submission to it,—a most unnecessary precaution, as the people of Texas had already served an apprenticeship to submission.

Any attempt to point out the incidents connected with the administration of such a government, must be deferred for the present. The effect upon the minds of the people was a gloomy despondency, and dread of evil, relieved only by a buoyant manhood, that inspired the hope for future relief. As time passed, the commanding general, pursuant to the acts of reconstruction, took steps to have a registration of legal voters. All persons who had previously held office in the State and had afterwards participated in the so called "rebellion" in favor of the South, were excluded from registration. That, of course, disfranchised a large body of persons, embracing leading citizens, from governors down to the lowest officers who held office since annexation, most of whom had participated, in some way, in the war in favor of the South. That being completed, orders were issued in 1868 for the election of delegates to the convention by the registered voters. The convention was assembled at Austin, to form a Constitution, on the 1st day of June, 1868. Out of the forty-five delegates in

that convention, there were perhaps a half dozen men of distinction, who had been, and have since been known outside of their own neighborhoods. Judge E. J. Davis was elected president of the convention. It continued in session until the 21st of August, 1868, when it adjourned. It reconvened on the 7th of December following, and adjourned finally on the 6th of February, 1869. An explanation of its continuance as a body, in and out of session, for eight months, is to be found in the fact, that it was largely engaged in legislation on numerous subjects.

No further reference will be made to the work of this convention, than what is necessary to show that the Constitution adopted by it, and the succeeding government under it, were so shaped as to continue the process of reconstruction inaugurated by the Congress. The Constitution, by an "election declaration," was submitted to the qualified and registered voters at an election to be held on the first Monday in July, 1869, for its adoption or rejection; and, at the same time, said voters were to elect State and county officers, the returns of said election to be made to the commanding general of the district, who should declare the result of the election, and give certificates to the officers elected. The Constitution repudiated the "heresies of nullification and secession," and provided that no person shall be allowed to vote or hold office, who is or may be disqualified by the Constitution of United States, until such disqualification is removed by Congress; made the term of service of the governor and other executive officers to be four years; made the offices of the attorney general, judges of the supreme and district courts appointive by the governor, with the confirmation of the Senate; the judges of the Supreme Court were to hold nine years, and those of the district courts eight years; jurors were required to have the same qualifications as voters. Thereby most of the leading citizens were debarred from a participation in either making or executing the laws, by which they were governed. It had been made, by the first reconstruction law of Congress, a prerequisite to the admission of members of Congress, that the Legislature elected under the Constitution, when approved by Congress, should adopt the fourteenth amendment. The Constitution having been approved, the members elected met in session at the capital, with E. J. Davis as governor of the State, on the 8th day of February, 1870, and ratified the fourteenth and fifteenth amendments to the Constitution, and elected Senators to Congress.

An act of Congress was passed on the 30th day of March, 1870, recognizing the action of the Legislature as being in compliance with what had been required to entitle the State of Texas to representation in Congress; and proceeded further (to make sure that the State government should be organized, and continue to be carried on in full accordance with its plan of reconstruction), to

enact, that before any member of the Legislature of said State shall take or resume his seat, or any officer of said State shall enter upon the duties of his office, he shall take and subscribe, and file in the office of the Secretary of State of Texas, for permanent preservation, an oath or affirmation in the following language: (then follows the oath required of voters for registration). This oath was required to be taken in thirty days after the passage of the act, under penalty of forfeiture of office upon failure to do so.

So, as well might have been anticipated, the officers, for the most part, in Governor Davis' administration, were in full sympathy with the reconstruction measures, as evidenced by the registrations and elections held under armed police guards, arrests made by an armed police, officered and equipped as military companies, the declaration of martial law, the wrongs committed by incompetent and reckless officers, extravagant legislation, and numerous other causes of disturbance and harassment of the people. Such an excess of power must exhaust its fury in time, when exerted upon a submissive population; and so it did, after nine long years from the close of the war, during which time the people were sorely drilled and disciplined in the way to make a loyal republican government. If by loyal government it was meant a politically republican government, the discipline in Texas failed of its intended effect; for in the fall of 1873, after the disqualification to vote and to hold office had been removed, the mass of the people rushed to the polls and re-established the people's government, with Richard Coke at its head, as governor, and soon the favorites of the central power disappeared from the public stage of action.

That was a Texas Democratic reconstruction. And now, in 1891, after its continuance for sixteen years in Texas, and in the other Southern States, there is a powerful party in Congress, in a desperate struggle to supplement the Congressional reconstruction commenced in 1867, by the establishment of cloture (an English importation), by which the caucus-constrained majority in either house can close the debate upon any measure at discretion, without allowing the minority to discuss it, for the enlightenment of the public, and by that means to force the passage of the election bill, the object of which is to take from the States the management of the election of their own representatives in Congress, and place it under the control of Congress.

That measure, if it becomes a law, will certainly complete the Congressional reconstruction of the eleven Southern States, if anything will do it. That is its object now; but its effect would be to establish a central power, that can at pleasure destroy what little is left in all of the States of independent local self-government.

A LECTURE.

SUPPLEMENTARY TO THE PRECEDING LECTURES UPON PRESIDENT JOHNSON'S RECONSTRUCTION, AND THE CONGRESSIONAL RECONSTRUCTION.

The preceding lectures having treated mainly of the two reconstructions of the Southern States, including Texas, the one by President Johnson, and the other by the Congress of the United States, there are numerous matters of interest that occurred in Texas, between the 19th of June, 1865, when Gen. G. Granger, of the federal army, issued his proclamation at Galveston, taking military possession and command of Texas, and the 8th day of February, 1870, when the State government went into operation under Governor E. J. Davis.

During all that period of time, federal troops were stationed in nearly all of the counties in the State. In the large towns there were regiments, or several companies of troops, and in small towns squads of troops were stationed, all acting directly or indirectly under a commanding general.

The objects of the military were to keep the people in subjection, and to secure the punishment of violators of the law.

As to the object first mentioned, there was no occasion or necessity for any active effort on the part of the military, as the mass of the people were anxious for peace, and the few disaffected persons had no encouragement from the rest, to make any combined resistance to the occupation and control of the country by the federal troops.

The second object mentioned, the effort to secure the punishment of violators of the law,—the military found opportunities of exercising their authority in various ways.

A. J. Hamilton arrived in Texas in July, 1865, and having appointed civil officers of the State, except justices of the Supreme Court, the different courts were regularly held (except the Supreme Court), during the time he acted as provisional governor of the State. The federal courts were also held. So also those courts, as well as the Supreme Court of the State, were held during the time that Jas. W. Throckmorton was governor, under the Consti-

tution of 1866, by officers elected by the people, until they ceased to be in office by the inauguration of the military government, which took place during the months of July, August, and September, 1867, by the removal of those, who had been elected or appointed to office in the State, and the appointment of officers to fill their places.

During this time, from the summer of 1865 to the fall of 1867, the federal troops in Texas were actively engaged in making arrests of persons accused of violations of the law, upon complaints usually made by Southern loyalists, or by the negroes, and perhaps mostly by the negroes. Indeed, the protection of the negroes seemed to be the main object of their being quartered in this country. The negroes resorted to them continually, as their protectors, which had the effect to alienate them as a class from the whites, for whom generally they had to labor for a support. Under the shield of such protection, they met frequently in large assemblies, in which speeches were made, complaining of how badly they had been treated, and how they had left, or been turned off by their former owners, with nothing for their support. The fact was notorious that however well they had been treated, they left their homes, and went to work for some one else, as soon as practicable, —deeming not to regard themselves free until they had done it, so that in a short time, very few persons had the same negroes employed, that they previously owned as slaves. It was curious to witness their first efforts of acquiring the possession of property. The first thing acquired by them generally was a dog, the next a gun, and the next a horse, and then better clothes. Provisions to live on amounted to nothing, just so that they could get something that they could subsist on, with an occasional bottle of ardent spirits. Though not all of them were intemperate. Their women, boys, and girls attended their public gatherings, and their preachers were their most influential leaders and speakers. In such gatherings in a town, those of them that had horses would mount them, and fill the streets in desultory parades. From the first, they were encouraged by the countenance given them by the soldiery, and by the encouragement of camp-followers, and of other white friends to assert their equality with the white people, which was awkwardly and unnecessarily attempted by them in a way to engender disturbance and conflict, which would result in a complaint to the military, and the arrest of some one. This irregular action might have subsided of itself in time, had not certain white men systemized the process of antagonism, by establishing amongst the negroes secret societies, then called "loyal leagues," in which those whites participated. In these conclaves, held in secret, usually in the night time, the negroes were taught that the white people were their enemies, and that they were in danger of being enslaved by them. Very soon the impression amongst them became

prevalent, and wide-spread over the State, that they would be given a portion of the wealth of the white people, as by their labor as slaves it had been largely created for them. Finally it assumed the shape, that each family was to be given at least forty acres of land and a mule; and whether this was done or not, the expectation was general amongst them, that the government, that set them free, would make some provision for them out of the property of the white people. From their standpoint, it seemed to them just and proper, that it should be done, and they confidently expected it. So strong and universal did this become, that Gov. Hamilton thought it necessary to issue a proclamation, which was circulated and read to them, in which he advised them to go to work, and make and save property for themselves, and not to indulge in the expectation that the government would give them any property, or make any provision for them. Still the proclamation did not, for a long time, have the effect to remove the delusion so deeply fixed in their minds.

In detailing the events during these times, it will convey a more distinct idea of them to give isolated occurrences, as samples of what must have often happened, under the influences then operating. For what occurred at one time and place, was likely to occur at others, or at least something similar to it.

A man residing with his family near Tyler, Texas, in the summer of 1866, hired a negro man and woman of middle age to work on his farm. Upon the occasion of their getting leave to visit town on a Saturday, which was a favorite day for their meeting in great numbers in town, the negro woman, before starting, came into the house, and addressing the lady of the house said: "Miss', I am going to town to get my property, but I won't take your place, but I will take the place of Mr.——,"—it being the farm of one of the neighbors. She left, being quite elated with the prospect.

Upon a certain Saturday about the same time, great numbers of them congregated in Tyler, from different parts of the county, evidently upon notice circulated for the purpose, some with wagons, others on horseback, and others by walking, under an expectation (as it was afterwards proved on a trial), that a division of property for their benefit was to be made there that day.

Sometimes the common soldiers treated the negroes very roughly, for which the negroes would rather make excuses than complaints, although they were always anxious to run to the officers with complaints against other white persons. An instance of this occurred in a town, where a negro man with his wife rented a little house in an alley, and established a cake shop, when several drunken soldiers entered their house, knocked the man down, run him out of the house, and took or destroyed all his ginger-cakes. His former owner hearing of it, called upon the negro the next day to find out about the outrage, when the negro man could hardly

be induce to tell anything about it. The reason was, they looked upon the soldiers as privileged persons, that could do what they pleased with both black and white people, and the soldiers, especially when intoxicated, seemed to think and often acted upon the same idea. This was the cause of numerous disturbances, and some terrible tragedies. One of them occurred in Tyler, where there were four companies of federal troops stationed a mile south of town, under the command of Lieut. Col. Montgomery. A number of soldiers being in town drinking during the day upon one occasion, when a young man, of the country, a Mr. Murray, who had arisen to be a captain in the confederate service (a much esteemed only son of a poor widow), who had also been drinking, though not drunk, got upon his horse and started home, when he was met in the street by a drunken soldier, who took hold of his bridle and asked him to get down and drink with him, which he declined to do, and told the soldier to let go his bridle, and get out of his way, which the soldier refused to do. Harsh words passed between them, and the soldier hit him with a stick, upon which the young man got down and cut the soldier badly with his knife. The soldier fell upon the ground, and laid there. The scene attracted a crowd of people, soldiers and others. An officer rushed up, and arresting the young man, hurried with him to the jail, and put him in it. The Colonel promptly took the keys of the jail, and placed a guard of soldiers at the door of it. The news of the occurrence soon spread to the camp, and a crowd of soldiers came running into town, and collected around the jail. They did not break open the jail, doubtless because they were not prepared with the necessary implements to do it. The next night they came and broke into the jail took the young man out and bayoneted and shot him to death in the jail yard. It appeared from the result exhibited afterwards, that the soldier fell down from his drunkenness, as well as from his injuries, and though at the time he was supposed by the bystanders to be mortally wounded, he soon recovered from his wounds. The colonel in command was fully aware of the rage of the soldiers, and was informed of their threats, still no proper steps were taken by him to prevent the murder of the young man. If the citizens had collected and undertaken to protect him in jail, it would have resulted in a deadly conflict of which they were then fully satisfied from the hostile spirit manifested by the soldiers, and the apparent indifference of the officers. Many of the citizens came to town upon hearing of the murder, and though they said but little, their countenances spoke for them loudly, and right then, if a few prominent citizens had taken the lead, and passed the word around, a thousand trained ex-confederate soldier might have been mustered in thirty six hours, and massacred the soldiers at night in their camp. Nothing but a knowledge of the terrible consequence of such a thing upon the whole commu-

nity, and upon the State at large, prevented it from being done. No effort was ever made by the officers, so far as known to the citizens, to ferret out and punish the guilty soldiers.

It was generally on the public roads, streets, sidewalks and other public places where the negroes assumed their newly acquired equality with the whites, and very often it was done in a manner that was an assumption of superiority, by failing to divide with the whites in passing the roads, streets, and sidewalks. This was very offensive to the whites—being so different from the former habits of the negroes—and caused an increase of antagonism, resulting sometimes in angry abuse, and even injuries inflicted on the negroes. Notwithstanding this, it was a noticeable fact that there was a large class of persons, especially those who had owned negroes previously as slaves, to whom the negroes paid usually a respectful deference, which being reciprocated, there was seldom any trouble between them. It was very seldom that any negro would enter any white man's private residence to manifest this assumption of equality. A case of that kind was reported to have taken place in a town in Texas. A negro man came into a lady's sitting room or parlor, and took a seat in it, and, upon being ordered out, refused to go, saying he was as good as she was, and that he had come to see her. She, of course, was shocked and alarmed, but had presence of mind to make some excuse to go into another room, from which she returned with a cocked pistol in hand, and again ordered him out. He again refused, and she shot him.

No other similar tragedy was heard of about that time. During the administration of Provisional Governor Hamilton there was a class of white men—being those who were opposed to the Southern side in the war—who made themselves very active in getting up indictments against the secessionists for alleged offenses, charged to have been committed during the war. In such cases the soldiers were employed in making arrests very often, or in aiding the sheriffs to make them. Fortunately, very few trials of such cases were had in the courts until after the judges and other officers had been elected under the administration of Governor Throckmorton, by which most of those indicted were able to make successful defenses. It happened also that complaints would be made to the military officers, which caused such arrests to be made of parties, who were kept in confinement by the military authorities indefinitely, awaiting further action by the parties complaining, in getting up prosecutions. It often happened that, as nothing further would be done, these arrested parties would be left on the hands of the military, who had no authority to try them, and who after being detained for a time, would have to be discharged. This became a subject of great annoyance to the mili-

tary officers, which finally made them averse to detaining parties, unless they were held under a charge by some legal authority.

When the members of the convention met at Austin on the 7th of February, 1866, it was currently reported, that there were there in the post commanded by Col. Reynolds, from one to two hundred prisoners confined, who had in like manner been arrested and detained, most of whom were never prosecuted in the courts. They had been collected there from different parts, and some of them, from distant counties in the State. At that time there was a man, who had been indicted in western Texas for an alleged offense during the war. An officer with a squad of soldiers, under military orders, had been sent two hundred and fifty miles, and arrested him and brought him to Austin at the meeting of the convention. The officer having him in charge sought to turn him over to the post, but as he had arrested and brought him under no *capias* or other legal authority, Col. Reynolds would not receive him, and he was set at liberty, and never was brought to trial on the charge.

The courts held by the officers appointed by Gov. Hamilton did not generally have the confidence of the mass of the people, of which they were well aware, and therefore there was but little efficient government during that time. The courts held by the officers selected under the administration of Gov. Throckmorton while it lasted, were better sustained by the people, so that it began to present the appearance of a regular civil government, and there was much less interference in it by the military.

Shortly after the surrender, the federal courts were held, in which much was done, affecting the interests of the people of the State, which will be better understood by being presented later on in a connected and separate consideration.

There was one measure adopted in Gov. Throckmorton's administration, by an act of Nov. 6th, 1866, that continued for a number of years, which requires notice, because it was an experiment then for the first time tried in this State, though it had long been authorized by the Constitution. A law was passed establishing a tax upon incomes. This required investigation of the private affairs of persons to ascertain the annual profits of their business, which proved to be annoying and troublesome. In a new country like Texas was, there were few persons who lived upon an income derived from an investment in property. Nearly all of them, that had property used it in connection with their own skill and labor to earn a livelihood, and, when practicable, an increase of property. It might happen however, as it did in some instances, that there would be a loss instead of an increase of property; for some merchants, and others, who handled large amounts of property in business, returned no income, meaning surplus increase, and consequently paid no income tax. That tax was abandoned after it was

shown to be impracticable, because it was not adapted to our condition.

During the existence of the military government, from the fall of 1867 to February, 1870, when the State government was inaugurated under Gov. E. J. Davis, the departure from a regular administration in public affairs, was much increased by the extraordinary measures that were adopted and enforced. Fortunately, perhaps, the people of Texas had received considerable experience in submission to arbitrary military rule during the four years of the war, and were consequently the better able to bear it when it was imposed on them, by the power of the federal government.

The plan of government of the eleven Southern States, as prescribed by the reconstruction laws of Congress, passed from the 2d of March to the 19th of July, 1867, was very similar to that which is usually adopted by nations at war, when one of them subdues and takes possession of a portion of the territory of the other, and holds it subject temporarily, by allowing the laws of the country to be enforced by its civil authorities, subject to such control over the laws, and the civil officers, by the military officers in command, as may be directed or permitted by the conquering nation.

This course is adopted because the ordinary administration of a government should be carried on, and it would be impracticable to suddenly institute a different system of laws to be administered by a body of civil officers, differently organized and with different powers and modes of action.

It was therefore provided in said acts of Congress, that "until the people of said rebel States shall be by law admitted to representation in the Congress of the United States, any civil governments which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States, at any time to abolish, modify, control, or supersede the same."

It was further provided that "the commander of any district named in said act shall have power, subject to the disapproval of the general of the army of the United States, and to have effect till disapproved, whenever in the opinion of such commander the proper administration of said act shall require it, to suspend or remove from office, or from the performance of official duties, and the exercise of official powers, any officer or person, holding or exercising, or professing to hold or exercise any civil or military office or duty in such district, under any power, election, appointment, or authority derived from, or granted by, or claimed under any so-called State or government thereof, or any municipal or other division thereof, and upon such suspension or removal, such commander, subject to the disapproval of the general as aforesaid, shall have power to provide from time to time for the performance

of said duties of such officer or person, so suspended or removed, by the detail of some competent officer or soldier of the army, or by the appointment of some other person to perform the same, and to fill vacancies occasioned by death, resignation, or otherwise."

Thus provision was made for carrying on the civil government for the execution of the laws of each of said States relating to rights of person and property as pertaining to civil injuries.

In regard to public wrongs or criminal offenses it was provided that the district commander "may allow civil tribunals to take jurisdiction of and to try offenders, or, when in his judgment it may be necessary for the trial of offenders, he shall have power to organize military commissions or tribunals for that purpose; and all interference under color of State authority with the exercise of military authority under the act shall be null and void."

"All persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be inflicted, and no sentence of any military commission or tribunal hereby authorized, affecting the life or liberty of any person shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the army shall not be affected by this act, except so far as they conflict with its provisions: *Provided*, no sentence of death under the provision of this act shall be carried into effect without the approval of the President."

Further it was provided that "no district commander, or member of the board of registration, or any of the officers or appointees acting under them shall be bound in his action by the opinion of any civil officer of the United States."

Under these provisions criminal offenders might be tried in the courts of the State, except when the jurisdiction was assumed to try them by military commissions or tribunals, and when jurisdiction was assumed by the military, it was not subject to any control by the courts either of the State, or of the United States.

Its power was made supreme, subject only to the district commander, and the President.

The supreme, district, and other courts were held for the trial of both civil and criminal cases at the times and places when and where they were previously held during the administration of Gov. Throckmorton.

The supreme courts were held by a chief justice and four justices, as prescribed in the Constitution of 1866, and were appointed, originally and from time to time as vacancies occurred, by the general commanding the district composed of Louisiana and Texas.

A very good view of the condition of Texas in regard to the work of the judiciary, and its effect upon the country during the recon-

struction period, may be inferred from a statement of G. W. Paschal, upon his return from Washington, where he had spent some time on business after the war.

Having been appointed reporter of the supreme court he states, in his preface to the 31st volume of Texas Reports: "When I returned to my home in 1868, I found the convention in session, the whole country under military rule, the business of the courts well nigh suspended, three members of the supreme court serving in the constitutional convention, the people in utter confusion as to the landmarks of liberty, the great mass of the legal profession entirely in the dark as to what had been the decisions for several years, and, under the cry of *ab initio*, there was still greater uncertainty as to what Constitution and statute laws the people were living under." The reference here made to *ab initio* was the effort being made in the convention to declare to be null and void all of the acts of the State government during the war after the date of secession.

During the administration of Gov. Throckmorton the legislature passed an act, entitled "An Act Regulating Contracts for Labor," approved November 1, 1866, the object of which doubtless was to make available and give permanence to the labor of negroes, who might enter into contracts with their employers.

This act was annulled by the order of the general in command of the district, which act of assumed authority of the military over the civil authority in the State was in January, 1867, reported to President Johnson by the representatives elect of Texas then in Washington. No further action was taken, and the law was never enforced.

Shortly previous to this, the said representatives had presented to the President a representation and protest of Gov. Throckmorton in relation to some outrages in Texas committed by the officers and soldiers of the army. What was done about it was never heard of afterwards. President Johnson was evidently anxious to prevent the military authority from interference with the civil authority, and from infringing upon the rights of the citizens, but it was equally evident that he was powerless, while Mr. Stanton was secretary of war, backed by General Grant commander in chief of the army.

During the existence of the military government in Texas, the subject of the most extensive annoyance to the people was the establishment and action of the tribunal called the "Freedmen's Bureau." The position of "Agent of the Bureau" was generally a lieutenant or sergeant of the army, aided and supported by a squad or company of soldiers. It was located in nearly every county-seat of the counties in the State wherein there were any considerable number of negroes. It was purely military in its operations, and had no connection with, and under no supervision of any civil

authority, although judges in all of the courts were appointed by the general in command. There was no appeal from its action. Its object was to protect the negroes by redressing all petty injuries of a civil or criminal nature committed upon them by white persons, but not to redress any injuries committed by negroes upon the rights of white persons. Its judge to determine cases was the agent of the Bureau, and its ministerial officers were the attending soldiers.

The rule of decision was the judgment or discretion of the agent. The punishment was fine or imprisonment,—one or both. The negroes ran to these tribunals upon the occurrence of every real or imagined infringement of their rights, and upon white persons being arrested upon their charges, the trial was prompt and summary, according to the humor, prejudice, or discretion of the agent acting as judge. Where the agents were active in the discharge of their duties, the people who had anything to do with negroes were in constant danger of being taken before this extraordinary tribunal.

In some places, however, the agents soon found that the complaints were generally frivolous or prompted by bad motives, and directed their efforts to making the negroes as well as the whites behave themselves. This kind of arbitrary proceeding in favor of the negro, had a powerful influence in encouraging them to assert their equality with the whites, and their mode of manifesting it often assumed a superiority over the whites, that produced irritations and disturbances. For instance, in passing white persons on the sidewalks, streets or roads, they would, to show their equality, fail to divide the space in passing, as white people ordinarily do. This same thing occurred in many other ways, wherever negroes came in contact with white people in public places.

Notwithstanding the influences continually operating to produce antagonism between the races, there were some things settled between them relating to their intercourse. The whites conceded equality before the law. The blacks conceded their inequality at the white man's home, which prevented their attempting to force a social intercourse with the whites. The point not settled was the equality of the two races, when they met, or were together in public places. Upon this point the antagonism was so extreme as to engender almost continual disturbances, resulting in quarrels, abuse, and physical conflict. It had increased from the time the negroes were set free until the spring of 1868, when there prevailed, in many parts, a most intense apprehension of a hostile outbreak between the two races. Both races had arms and ammunition for defense. White women were afraid for their husbands to leave home at night. The matter was not openly discussed. It was an oppressive dread, that was felt rather than spoken. Just then the

Kuklux appeared. No notice of its coming was heralded. As to most persons, it was like some strange thing, that had suddenly arisen out of the ground. In a village in Eastern Texas, about ten o'clock at night, the profound silence of the place was broken by the loud sound of a drum being beat in the graveyard at the edge of the village. The sound at such a time, and in such a place, aroused the attention of the citizens. Very soon there emerged from the graveyard a company on horse back,—ghost horses and ghost riders in appearance,—and marched in military array through the streets, performing accurately the manoeuvres of soldiers, in silence only occasionally broken by low guttural tones of voice. People looked out of their doors and windows at the strange sight,—horses draped in white, robes with white flowing shrowds and high caps on them. The negroes out visiting fled to their homes, and when intercepted by the march, took refuge under the houses, from which they escaped only after broad daylight the next morning. One house, where it was known there were negroes, was surrounded, when two or three of the riders dismounted, and calling a negro man out to the well, set him to drawing water. One of the riders, standing on the opposite side of the well, drank (or appeared to the negro to drink) three buckets of water, mumbling out a complaint of being very thirsty, not having had a good drink since the battle at Mansfield. This marching was kept up night after night, and was extended on the roads into the country, where it was known there were negroes. From the first ghost march from the grave yard, the point of contention between the races was settled. Every negro, man, woman or child, that met a white man or woman, divided, or gave the whole of the sidewalk, street or road, and the salutation of the old negroes was "good morning, massa," touching or lifting his hat gracefully. The negroes knew very soon that it was white men that were doing this, still the ghost-like appearance, and the military display of such large companies, confounded and overawed them. It struck them all over on their weak points,—their superstition, and their innate sense of inferiority to white people, when brought in contact with them.

At that time there was a squad of fifteen or twenty soldiers, under a sergeant, stationed in the village. When the marches took place, they did not show their heads out of their quarters.

The Kuklux occasionally committed some acts of violence, but it was more pretended than real, for their object was to scare, and not to hurt the negroes.

As soon as its object was accomplished, it disappeared as suddenly as it appeared at first.

It was a thing of the past for more than a year before the halls of Congress were in tribulation about it. How it was conceived, started, and spread, was a sealed secret to most persons, and es-

pecially those prominent men, who had been in the habit of leading in public affairs. It was a ground swell, instinctively directed to avert an impending catastrophe,—an internecine struggle between the two races, which was then upon the point of breaking out. It was learned afterwards that it was started in Paduka, and spread like wild-fire over the Southern States.

Although the tribunal of the Freedman's Bureau was in full and active operation during the time the Kuklux were in service, no actions of theirs in regard to the negroes were ever brought before it, so far as heard from. Nor were there any prosecutions in the courts arising out of their conduct. This is sufficient to show what were the enormities of the Kuklux (about which Congress was afterwards so grievously exercised) that were made to grow into frightful proportions, as the news of them traveled to the North.

Under the authority given by the reconstruction laws, as previously quoted, military commissions were instituted for the trial of persons charged with felonies. Two of them were held in the town of Jefferson, Texas, in 1869. The court was composed of officers in the army, with a presiding officer, and a judge advocate, as prosecutor, and was conducted very much like a regular court martial in the army. The prosecution was by written charges, and specifications under them. The evidence of the witnesses was written out, after being taken down in shorthand as the case progressed. Every word uttered by the court, the judge advocate, the lawyers, and the witnesses, was thus made a part of the record in the case, except the addresses of the counsel, permitted to be made in writing and read to the commission, after the evidence was closed. There was then stationed at Jefferson a body of troops, perhaps a regiment or more, in command of a brigadier general. The general, upon such information as was satisfactory to himself, ordered the arrest of the persons to be tried. The order was executed by officers and soldiers in his command. Upon the arrest, no order or charge was shown to the party arrested, and the cause and its nature could only be surmised before the party was brought to trial. For safe keeping, the parties arrested were confined in the stockade, until discharged, either on bail, or after trial. The stockade was a structure about one hundred feet long and fifty feet wide, located in an open space, not surrounded by trees or houses. It was constructed by setting upon end logs about ten feet high, close together, at the four sides, and placing on top of them a narrow platform, for the walk of the soldier-guards, musket in hand, with orders not to allow the prisoners to approach the wall thus made, under pain of being shot. Inside of this wall was a double row of cells, placed near the middle of the longer way of the enclosure, in which the prisoners were locked up at night. In the daytime they were allowed to shelter themselves from the

hot sun of summer, as well as they could, under the shadow of these low cells or within them, with scarcely a breath of air circulating amongst them. At four o'clock in the evening, when some of them were brought out to see their counsel, relations or friends, their clothes were as wet as if they had come out of the Cypress Bayou near by.

In the first one of the cases referred to, there were twenty-one persons, including some leading citizens of Jefferson, charged with murder, in a homicide in that town by a mob. The trial occupied several months, and excited great interest there and elsewhere. There were distinguished lawyers engaged in the defense, to-wit: D. B. Culberson, Reuben Reaves, William Wright, and Campbell (now recollected). It was managed with an ability corresponding with the difficulty and importance of the case.

It could not be denied that there had been a mob of exasperated citizens, and that a man was killed by them. There were many, perhaps over a hundred, witnesses examined for the prosecution and the defense. The difficulty may be imagined, in conducting the defense, when it is considered that a witness, that would clear one of the prisoners by proving an *alibi*, might implicate another one. Therefore, witnesses only should be put on the stand for defense, whose evidence would be in favor of one or more, and not against the others. There were six of them sentenced to the penitentiary, where they did not remain long before they were pardoned out by the President. It was said that the sentence was a surprise to the attorneys, because some of those found guilty had less evidence against them than others, who were acquitted. During the trial, one of the officers on the commission openly manifested an inveterate prejudice against the prisoners. It was so plain that the others could not help seeing it.

Upon the opening of court one morning, Col. — Campbell arose, paper in hand, and asked that he might read it to the court on behalf of himself and associates, acting for their clients, the prisoners at the bar. Permission was granted, and he read it with a deliberate and respectful tone of voice, clear and strong.

It was a charge of manifest and undue prejudice by one of the judges against the prisoners, and a request that he be recused as one of the judges in the trial of the case. Before he proceeded far in the reading, the judge indicated abruptly left the body of the court, and retired to the rear.

To one present, considering the surrounding circumstances of the occasion, the boldness of the attempt, the splendid style of the production, and its manly delivery in the reading, the profound interest in the issue by all present, and the respectful attention of the officers—the judges—it presented a grand display of the independent assertion of just rights—a scene never to be forgotten.

The officer recused never sat on the commission again. He

was a rude, vigorous old man, who had risen from the ranks by his courage and long service, and most of the others were polished gentlemen, who were disposed to give the prisoners a fair trial. It was strongly suspected that they had been consulted, or had given such intimations as encouraged the making the effort to recuse the rude old officer.

The other case referred to was the prosecution of four men for an assault with intent to murder three soldiers, in the court house at Tyler, Smith county. They were shot by several persons while acting as a guard for the agent of the Freedmen's Bureau at the end of the trial of a young man, who had stricken a negro for having rushed up against a young lady with whom he was walking the evening before.

As there were several persons concerned in the shooting, the effort of the prosecution was to show that it was a conspiracy to kill the agent and the soldiers. Immediately after their arrest the attorneys, in talking with the General, discovered what was intended to be charged against them, and at once took steps to rebut the conspiracy, and to show that it was, as to three of the four prisoners at least, a sudden and unexpected difficulty, in which they were not criminally concerned. That precaution reduced the case on trial to simply an assault with intent to murder. The counsel for the defendants were Reuben Reaves (who was taken sick and so remained after the fourth day of the trial), Gen. J. H. Rogers, Frank Hays, and O. M. Roberts. The trial lasted four weeks. Over fifty witnesses were brought from a distance, mostly from Tyler. There were many thrilling incidents during the trial. The judge advocate was aided by the Bureau agent, who was a bold, fearless man, who evidently had experience in petty trials in courts, and was bent upon making out a case by any means, fair or foul, that he could use.

His instruments were mainly the negro witnesses, who told what they saw and heard about the difficulty in a way that destroyed most of their evidence. He brought with him from Tyler a young white girl (at least that was her complexion), as a witness, who was taken out of a bawdy house. She swore to a transparent falsehood, and on cross-examination admitted that she was born a slave of African descent. After the evidence was closed, written arguments were read by the attorneys. The court rendered no opinion, that was made known, but three prisoners were discharged on the bail bonds, that had been given before the trial, and nothing further was ever heard as to the determination in their cases.

The other prisoner was retained in custody until the State government was organized, when he was turned over to the civil authority, and that was the end of the matter. It is but just to the members of the commission to state that they were liberal and indulgent to counsel in their efforts to develop the case, and after

hearing the arguments of counsel, expressed privately their gratification at the course pursued on the trial by the counsel, as well as by the court.

There was a subject which, to counsel and parties engaged in these trials, was oppressively painful, rarely experienced in ordinary criminal courts. The members of the commission were known to be military officers, not lawyers. There was a continual uncertainty resting on the mind as to whether or not they could be made to understand the principles of law, and mode of proceeding for a proper adjudication of the case. In addition to that; if they should err in either respect, or in their final judgment, there was no appeal to another court, that may be better informed on the subject. There may also be an apprehension that the result of the case may be influenced by a military policy, unknown in the ordinary criminal courts.

There were other commissions in Texas, but the instances given will illustrate them sufficiently. They were professedly resorted to as a mode of trying criminal offenses that occurred in such localities and under such circumstances as to induce the belief, that the ordinary criminal courts of the State would not be competent to inflict the proper punishments upon such persons as were attempted to be prosecuted in them. Nor was this belief entirely unfounded; for the population of Texas was then divided into two distinct classes. One class was composed of the military officers, from the highest to the lowest in rank in the district, the agents of the Freedman's Bureau scattered over the country, the military commissions, the judges of the different courts and the ministerial officers appointed by the military commander, and subject to be removed by him, the jurors in the courts being only those persons who could take the "iron clad" oath, the negroes as a body, and the few Southern loyalists—white men. This included those persons, who governed, and those who were the special objects of protection by the government, as it was then carried on.

The other class consisted of the great body of white people, including the men of personal influence, of high standing, and of the property owners in the State, who had either participated in, or sympathized with the Southern struggle for separate independence.

It was the case of the military government, with such instruments and adjuncts, against the great mass of the white people. The mass of white people were not in favor of such a government, stood aloof from any participation in aid of it, and sought generally to have nothing to do with it. When outrages were committed, caused by the provocations, antagonisms, and arbitrary rule, that then existed, those persons not concerned in them, simply stood off, looked on as unconcerned spectators, and let the government redress the wrongs if it could, with its organized instrumentalities.

For instance, in northeastern Texas, there was a small crowd of

desperate men headed by a man by the name of Baker, who committed some depredations upon the soldiers, negroes and others of that class, and another small crowd in northern Texas headed by a man named Biggerstaff, did the same for a short time. As in the mob at Jefferson, the difficulty at Tyler, and the action of the Ku-klux, the mass of respectable white people, that were cognizant of the origin of those things, knew that they arose directly or indirectly out of the tyranny of the officers, or the bad conduct of the negroes, or of some of their class-adherents, they did not feel it to be incumbent on them to rush out voluntarily in aid of the governing authorities, that had, without their consent, been placed over them. Upon the occasion of the difficulty at Tyler, wherein three soldiers were shot by a little crowd, the district judge got on his horse and fled out of the town, and all the rest of the civil officers sought places of safety, and left the Bureau agent with his squad of soldiers to disperse the little crowd that shot, and not one of them were ever arrested and tried in the courts on indictments. The military officers, and the established courts not having either the moral or physical support of the mass of the white people were powerless to redress the wrongs that were committed. The most that that they could do was to report exaggerated and *ex parte* accounts of the occurrences to the provisional governor, and military commander at Austin, who, not understanding the causes which led to these disturbances, nor their narrow local extent, ignorantly and falsely attributed them to a general spirit of disloyalty pervading the State, as may be seen in their reports of the condition of the country to the reconstruction convention in 1869.

Soon after the close of hostilities Judge Duval, having returned from his visit to Washington during a part of the war, held the federal courts in what was (strangely) called the Western District of Texas at Tyler, Austin and Brownsville. At the first session at Tyler the lawyers came into court to look after the cases, that had laid over, as well as the new cases brought. The jurors, for the grand and petit juries, were assembled in court on their seats. Such a body of men !—Who are they, and where were they found? were the whispered inquiries of the old lawyers, that had formerly attended the court. But they could all take the “iron clad” oath, and therefore were good jurors for that court. That court was held there regularly from that time. Civil business was transacted much in the usual way. No criminal cases of magnitude were prosecuted in it. The cases most affecting the people were the prosecutions for violations of the internal revenue laws pertaining to the sale of liquors, cigars and tobacco, about which vendors of those articles were at first very little informed. Spies were sent out, by whose order is unknown, to find out the violations, and prosecutions were based on their evidence. At one time there were seen defendants in attendance on that court from numerous

counties extending from Hill county in the west to Shelby county in the east. But the officers were very accomodating. If a defendant, who was indicted for several violations, would confess guilty of the lighter offense he could get off with fine and cost, amounting from sixty five to eighty dollars. If on the other hand he was disposed to defend the case, he would soon find that he might not get a trial at that term of the court, and rather than come back to the next term of the court, he would generally confess and pay out. It was a profitable court to the officers. And indeed it is but just to say, that the officers did not manifest a disposition to oppress defendants as much as they had the power to do, in prosecuting the criminal cases.

Many other matters pertaining the action of the government and the conduct, and treatment of the people of the State, in other parts of the State, were reported in the papers, and heard of otherwise, similar to those which have been detailed. As stated before, it was thought that a better idea concerning the condition of the country could be conveyed by a representation of facts, known or believed to be authentic, as samples of what occurred, or was likely to occur at other times and places, than to attempt a more general, and therefore less specific view of the subject.

Amidst all the evils of such a government, if there was one benefit that was conferred upon the mass of the Texas people, it was in teaching them the glorious blessing of living in a well regulated civil government of their own choice and creation.

The government, that had been placed over them from 1865 to 1870, was not the government of Texas by its own people (except during the year of Gov. Throckmortons administration), but the government of the United State, absolute, and military in character, placed over the people in the territory of Texas, or in other words, it was our federal relations being restored, through the agonizing process of a military despotism, enforced by the power of the United States over a disarmed and prostrate people, long after hostilities had ceased,—a revolution completed in a time of peace.

CONSTITUTIONAL GOVERNMENT.

THE DANGER TO GOVERNMENTS, FOUNDED ON WRITTEN CONSTITUTIONS, OF BEING GRADUALLY REVOLUTIONIZED BY THE CONSTRUCTION PLACED UPON THE PROVISIONS OF THE CONSTITUTIONS BY THOSE WHO ADMINISTER THE GOVERNMENTS.

[Public Lecture in the Texas University.]

This may be done by enlarging and extending the powers conferred by a liberal construction, based upon the supposed reason and spirit of its provisions, so as to meet emergencies not anticipated and specifically provided for;—by using the powers granted in such a manner as to accomplish objects incidentally, which were not embraced in the Constitution, and could not, therefore, be accomplished by direct action, and by not understanding the true meaning of its provisions, as they were designed to be understood by those who framed and adopted it, and thereby assuming powers never intended to have been granted.

The government of the United States has grown to gigantic proportions, reaching out in all directions.

The diversified objects to which its action is now devoted, would seem to justify the conclusion that its chief business is to promote the private pecuniary interests of persons, of classes of persons, and of corporations. Its greatest internal struggles are made, in its efforts to adjust and distribute its favors, both direct and indirect. The necessary result of this has been to facilitate the amassing capital in favored pursuits, which will inevitably engender the conflict between capital and organized labor. When that conflict reaches a crisis, and is settled, as it must be, then it may well be feared that our republican institutions will be changed, with a tendency either to anarchy or despotism, as the one or the other may be dominant.

Now the question is, did this direction, which has been given to the operations of the government, depend upon a proper construction of the provisions of the Constitution, in their application to occurring events from time to time, or did it result from such constructions as have been mentioned, as being calculated to produce

the change in the government from its original design, as prescribed in the Constitution?

This result, in the objects to which its action is devoted, has been reached by a long series of measures, embracing the highest and most extensive powers of government. It has acquired additional territory, and largely extended its dominion, by conquest, and also by purchase, with money raised by transaction. It has furnished the people with a paper currency, by chartering banks, and by issuing treasury notes, and gold and silver certificates. It has furnished the people with inland transportation by the charter of and bounty to railroad companies. It has extended the field of commercial operation for the benefit of merchants, by bounties in money given to ship lines. It has given ship builders a bounty indirectly, in the monopoly given to them in furnishing vessels for the coast-wise trade. It has given a bounty in money to fishermen for exporting salted fish. It has caused a fish commission to breed and distribute fish of good quality throughout the country to supply the people with more abundant and cheaper food.

It gives a bounty by indirect protection to manufacturers, which is professedly intended to benefit the laborers employed, as well as the capitalists, who engage in manufacture. It gives a bounty by indirect protection to wool-growers and sugar planters. It has an educational bureau to promote the education of the people. It has a farming department to aid the farmers, horticulturists and orchardists. It is promoting the interests of stockmen, by employing veterinary surgeons to find out the causes of the diseases that kill their cattle and hogs. It applies money raised by taxation to give relief to sufferers from overflows of rivers, and epidemics within the States, and to establish quarantines to prevent epidemics from entering the country, by which the lives of the people will be endangered or destroyed. It promotes the intelligence, literary and scientific knowledge, and industrial skill of the people, by appropriating money in aid of great fairs, exhibited both at home and abroad. Nor has it been neglectful of the good morals and habits of the people, for it has taxed whiskey and tobacco an amount two or three times their merchantable values, to discourage the use of them. It gives pensions to persons after their services have terminated, both in the military and civil departments, and (to their widows also) without that compensation for the services rendered having been embraced in the contract of employment. Diamonds and some other tasteful objects are allowed to be imported under a comparatively low tariff, for the purpose, as it may be supposed, to elevate the people to an appreciation of the refinements and magnificence of the people in Europe and Asia. It has assumed the guardianship and education of the Indians, with all of its expensive and complicated consequences. It has proclaimed to the world what is called the Monroe doctrine,

that no more monarchies, or greater monarchical influences are to be established, or tolerated on the American continent, which implies a right and a will to prevent them by the government of the United States. Without further enumeration this incomplete list may be closed by reference to its purchase of Alaska, in the Arctic regions of North America, for the benefit of the whalers and fur traders, and the expenditure of the people's money in aid of expeditions to find the North pole for the purpose of—(I must be excused for not having inventive imagination sufficient to complete this sentence).

All of these things may be admitted to be good of themselves, and beneficial to the people of the United States; still the question under consideration would not be settled. For just such results have been accomplished in England by the action of its government, which is an absolute sovereignty, with unlimited powers to do any and every thing practicable to promote the private, as well as public interests of its people, and to extend its dominion, rule and influence. It might be difficult to discover a great many things done by England for a century past to promote the private material interests of its people, that the government of the United States has not done, by the direct or indirect action, for the same purpose notwithstanding it is not a sovereignty, does not exercise any general absolutely sovereign powers, but was created, exists, and acts by authority of governmental powers, delegated to it by the people of the States, which powers, with the object expressed or implied in them, are few in number, and defined in the Constitution of the United States.

This assertion, as to the nature of the powers exercised by the government of the United States, is based upon the American theory of our governments, both federal and State, that the people are sovereign, and not the governments, which they have instituted by the delegation of certain defined powers to be exercised by them, as prescribed in the organic law, the written constitutions. The people occupy the position of a principal, and the government that of an agent, acting under a written power of attorney, which specifies the powers to be exercised by the functionaries of each department, and the objects, upon which the powers delegated are to be exercised. That the powers granted the different departments of the government of the United States were limited, might have been inferred, from the fact that they were delegated, and specifically set forth, but to leave no doubt about that, an amendment of the Constitution was very soon adopted, providing, that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The provisions relating to the organic structure of the government, by division into three departments, and those relating to restrictions upon the governments of the

United States and of the States, may be passed over for the present, as they have not contributed in any great degree to produce the results pertaining to the private material interests of the people, that have been partially enumerated.

To find that the powers, that have so contributed, are few in number, reference may be had to those granted to the Congress under, and by virtue of which, the legislative powers therein granted to it should be exercised. So far as they are necessary to be referred to, they are the following:

Sec. 8. The Congress shall have the power,

1. To lay and collect Taxes, Duties, Imports and Excises to pay the Debts, and provide for the Common Defense and general welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

2. To borrow Money on the credit of the United States.

3. To regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes.

4. To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies, throughout the United States.

5. To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures.

6. To provide for the Punishment of counterfeiting the securities of Current Coin of the United States.

7. To establish Post Offices and post Roads.

8. To promote the Progress of Science and useful Arts, by securing, for limited Times, to Authors and Inventors, the exclusive rights to their respective Writings and Discoveries.

9. To constitute Tribunals inferior to the Supreme Court.

10. To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the law of nations.

11. To declare War, grant letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.

12. To raise and support Armies, but no Appropriation of Money to that use shall be for a longer Term than two Years.

13. To provide and maintain a Navy.

14. To make Rules for the Government and Regulation of land and naval Forces.

15. To provide for the calling forth of the Militia to execute the Laws of the Union, suppress Insurrection, and repel Invasions.

16. To provide for organizing, arming and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively the appointment of the Officers, and the Authority of training the Militia according to the Discipline prescribed by Congress.

17. To exercise exclusive Legislation in all cases whatsoever over such District, etc., (referring to places for the seat of government,

Forts, Magazines, Arsenals, Dock Yards and other needful Buildings ceded by the States).

It will be seen that the objects, upon which the powers are to be exercised, are embraced in the specification of the powers themselves respectively, and are for the most part indicated by the words commencing with capital letters written here, as they were written in the original instrument, on file in the Secretary of State's office. (So certified by James Buchanan, when Secretary of State, in 1846.)

The objects specified, in declaring the powers granted, were exactly the things, and the only things intended to be accomplished by the execution of the powers respectively, which contained their appropriate objects. It may be truly asserted that there is not a single power granted to Congress, or to any department or officer that does not contain in plain language, or by reasonable and necessary inference, the specific object designed to be accomplished by the power specially granted. And this is, emphatically the case as to each and every one granted to Congress.

The objects for legislative action are plainly expressed in the powers that have been granted, but not so definitely with extent and limits, as to prevent differences of opinion in the construction necessary to determine what was actually meant by the expressions used in regard to them. The terms used must be interpreted in the light of the existing and antecedent circumstances, relating to the objects, as they must have been known to those who adopted the Constitution, so far as it is practicable at all times subsequently to ascertain them. To appreciate this as a means of interpretation it is only necessary to mention the words used, without explanation of their meaning being defined, because it was well understood by those who used them, such as taxes, imposts, excises, debts, common defense, general welfare, commerce, money, coin, postoffices and postroads, militia, courts, etc. Here it will be seen that the purposes for which the powers are granted are not fully expressed, but indicated by the use of terms from which the purposes can certainly be inferred. In the clause giving the power to coin money the purpose is not stated. But the purpose for which money is coined was then well and universally known to be to furnish to the people a circulating medium of fixed value. That is a liberal though necessary implication in the construction given to the clause. That liberal implication, however, has a well defined limitation, from the use of the words "money" and "coin," which requires the circulating medium to be coined gold and silver, and not iron, steel, or precious stones or paper. A like limitation must be applied to the other objects in all the other general powers from the words used to indicate the objects.

The powers given "to lay and collect taxes," etc., "to provide," "to regulate," and the like, were indefinite as to the manner and

means to be used in the execution of the general powers, thus granted for the objects specified, and opened a wide field of discretion to be exercised by Congress in that regard. For such general grants of power would imply the incidental power to execute them. To furnish a guide to this necessary implication, another clause was inserted in the Constitution as follows:

18. "To make all laws, which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

This clause, instead of enlarging the powers of Congress, was intended as a limitation and restriction of the broad, and indefinite implication of powers, that would otherwise have arisen, in the passage of laws, to carry out the other powers that are expressed in general terms, and confined Congress to the passage of such laws only as were necessary and proper for carrying into effect those general powers vested in it, and in other departments, and officers of the government. The general discretionary implication of power to execute other powers are therefore superseded and abrogated, by this special grant with its limitation. Whatever discretion is left, is in the determination of what laws would be necessary and proper, to carry into execution the general powers—that is, what laws, in view of the nature and terms of the grant of general powers, and of the objects to be accomplished by them respectfully, as indicated in the grants themselves, would reasonably be needed and appropriate to affect the objects contemplated and expressed, and those only. All of the powers granted, are granted only for the purpose of accomplishing the objects, expressed in connection with the grants of powers. The use of two words of limitation "necessary" and "proper" must have been for some useful purpose, having reference to the objects to be attained. Under this provision it was made the duty of Congress, first to determine exactly what was the particular object designed to be accomplished, by any one of the general powers granted to Congress, and with that object in view, and that alone; next, the law, under the auxiliary clause, should be shaped so as to directly effect that particular object; with a single purpose to that end, and no other, is a duty enjoined upon Congress, by the limitation, that it shall be only such a law as would be necessary and proper. If in any case any part of the law passed, under the auxiliary clause, was not necessary to effect the exact object expressed in the general power, it would be superfluous and unauthorized; and if it was not proper to effect such object alone, but was so shaped as to accomplish and with a design to accomplish some other object in addition to that expressed in the general power, thereby making it accomplish two distinct objects, one direct, and the other incidental, one expressed, and the other not expressed in the general

power, then the law, so passed under this auxiliary power, would be unauthorized to the extent to which it was shaped and used to effect an object, not embraced in the Constitution.

If the main object accomplished was the one that was incidental and not expressed, and the law was so shaped as to show the design to effect the incidental object mainly, it would be a flagrant perversion of the powers granted, by which the objects of the governmental action might be indefinitely extended to all objects, limited only in their scope and diversity by the failure of adroit ingenuity to devise the perversions. This may be illustrated by reference to some of the general powers that have been quoted. (Part of the 5th.) The power "to coin money, regulate the value thereof," etc.

Money meant coined gold and silver. Its value as coin being fixed, it would answer the purpose for which money is used. The objects embraced in the provision are money and its value when coined. The general power granted is to make money by coining gold and silver, and to fix a value to the money that is coined. The use of the auxiliary power (clause 18 quoted), is to give authority for the passage of such laws as may be necessary and proper, to get charge of the gold and silver, establish a mint with its implements, and working force, and indicate the denominations, and the designs to be stamped thereon, and the values respectively of the money to be coined, together with the disposition of it when completed. If under the auxiliary power a law should be passed authorizing paper or parchment to be stamped, and a value to be fixed upon it as money, and requiring it to be used as money of the value fixed upon it, it would certainly be a flagrant perversion of the powers conferred on Congress in the clauses referred to (5th and 18th). This would follow from the words "money" and "coin" as used, which would limit the powers of Congress in providing for the people a circulating medium to the materials of gold and silver, coined into money.

Another general power is "To establish postoffices and post roads." Here again the purpose is indicated by words descriptive of the necessary appurtenances, in carrying on the business contemplated, which was the receiving, transporting, and delivery of letters and other mail matter, for the convenience and benefit of the people, who might send or receive such letters or mail matter. This was the single and the only object of the grant of power, as indicated by the use made then and previously of postoffices and post roads. The words post roads were used to authorize the establishing of the routes between the postoffices, upon which the mail was to be transported. The word roads would convey the idea that the routes should be by the land, as doubtless was the practice previously. When afterwards steamboats plied between points in the country in which postoffices were established, it re-

quired a liberal interpretation of the word roads to establish a route as a post road on the water of streams and bays, navigated by steamboats or other craft. Suppose it should be convenient and beneficial to citizens of New York to send a few letters to Rio Janeiro, a port in South America, Congress would have to indulge in a most extravagant implication of power, in establishing a "post road" in the ship's track in the Atlantic ocean, from a postoffice established in the city of New York to a postoffice, or some sort of substitute for it, in the city of Rio Janeiro. And suppose a ship line should be employed to carry the mail on that route, by giving in money a large bounty annually, amounting to hundreds of thousands of dollars, entirely disproportioned (as \$500 or perhaps five thousand dollars to \$1) to the value of the service rendered in carrying a few letters in the mail from one place to the other. The objects of the bounty are to pay for carrying the mail (which is comparatively a small consideration in the giving of it), and also an increase and promotion of the trade between the two parts, that being the leading object in giving the bounty. It would enable the ship line to force an increase of the trade by low freights, that would not of themselves be an adequate compensation for the voyage—the deficiency in which would be supplemented with the profit by the bounty money that it would get from the coffers of the government, raised by taxing the people. This is not "regulating commerce with foreign nations," but it is making trade at the government's expense to benefit the merchants of New York in their private pecuniary interests.

Here there are two distinct objects accomplished under the general power "To establish postoffices and post roads;" the one direct—to carry the mails, and the other indirect (badly disguised by being not named in the contract)—to increase foreign trade. The increase of foreign trade is not mentioned as an object in any of the powers granted to Congress in the Constitution, nor can it be made one, by the broadest implication, and the most liberal construction, that can be indulged, in regard to any provision of the Constitution, when properly understood. The laws passed and so shaped with the design to increase foreign trade are therefore an unwarranted perversion of the powers granted to Congress to establish postoffices and post roads. A similar perversion of this power is plainly exhibited, by making postoffices broker establishments, to transmit money from one person to another in different localities, for compensation given to the government for service performed, the same as is given to banks for similar service.

Let us examine the Constitution to see if you can find any provision in it that gives to Congress the power "To encourage the manufacture of iron in the United States." Upon the most exhaustive search, we will fail to find it by any sort of inferential construction. We do find, however, in part of the Sec. 8,

Art. 1, the power "To lay and collect taxes, duties, imposts and excises to pay the debts of the United States," etc. To carry this general power into execution the auxiliary clause (18 of same Art. and Sec.) must be called into requisition; which gives Congress the additional power to pass such laws as shall be necessary and proper for carrying into execution the foregoing general power; in order of course to accomplish the object for which the general power is given, which is to pay the debts. Proceeding then to execute this general power, Congress passes a law for laying and collecting a duty (commonly called a tariff), of forty per cent. upon all iron imported from foreign countries into the United States, to be paid into the custom house for the use of the United States, with which to pay its debts. That brings in a certain amount for that purpose—say one million of dollars. But statesmen know, and it is supposed, most of them would admit, that if a duty of twenty per cent. instead of forty, were laid it would have brought in double the amount of money, with which to pay the debts—say two millions of dollars. If the object was to exercise the power in the manner necessary and proper to pay the debts, why was not the duty put at twenty per cent? The answer is, that Congress purposely so exercised the auxiliary power as to embrace in their legislative action in effect another power and object, not found in the Constitution, which was the one, in vain searched for awhile ago,—"To encourage the manufacture of iron in the United States," and by which they give a bounty to the manufacturers of iron in this country from three to five millions of dollars for every million of dollars collected to pay the debts under the duty of forty per cent. That amount, of from three to five millions of dollars, was paid to the home manufacturers by our own people, who bought the iron.

If the duty had been only twenty per cent. our purchases would have paid proportionately less for the iron bought by them, and the government would have paid twice the amount towards its debts.

It is hardly necessary to further point out that here there has been two objects accomplished under pretense of executing one power, one of which was to promote the private pecuniary interests of a particular class of persons, which as an object, either expressed or implied, is not to be found in the power granted (Art. 1, sec. 8, clause 1), nor in any other place in the Constitution.

Another mode of enlarging the powers granted to Congress may be noticed. One of the clauses gives Congress the power: "10. To define and punish Piracies and Felonies, committed on the Seas, and Offences against the Law of Nations."

Piracy has been defined to be "robbery or forcible depredation on the high seas, without lawful authority and done *niamo furandi*, and in the spirit and intention of universal hostility." Those who framed the Constitution doubtless well understood what piracy

was, and that it was an offense equally against, and punishable by all civilized nations, as being against the law of nations. Several statutes were passed by Congress at an early day on the subject, and one in 1820 provided in substance, that if any citizen of the United States, being of the crew of any foreign vessel, engaged in the slave trade, or any person whatever being of the crew of any vessel armed in whole or in part, or navigated for or in behalf of any citizen of the United States, which was engaged in the slave trade, should be adjudged a pirate, and on conviction, should suffer death. This might well have been made a felony with the same punishment, but it could not be made piracy, according to the universal understanding of the ingredients of that offense at the time the Constitution was adopted. The objection to the statute is, not that the offense created by it was of less degree in turpitude, but that the law was not responsive, and correspondent to the grant of power to Congress to define and punish piracies, which in a limited government, guided in its action by the terms of a written Constitution, is a matter of first importance. Such a departure, under the laudable impulse to deter persons from the commission of what has become to be regarded as a heinous offense against the rights of mankind, makes a precedent, that, under similar impulses on other subjects, may be followed by another and another, until the guides for legislative action may become too little heeded in legislation.

Another mode of obscuring the distinctive organic rules of action may be in blending in laws upon the subject matters peculiarly pertaining to the different departments of the government; which may be illustrated by the law creating the tribunal styled "The Court of Claims," under the clause which gives Congress the power: "9. To constitute Tribunals inferior to the Supreme Court."

Without attempting to make a complete detailed statement of the various subjects embraced in the jurisdiction of that tribunal called a court, it will suffice to say, that it exercises jurisdiction in certain suits, brought by persons asserting claims against the United States, founded on certain laws of Congress, or on contracts express or implied with the government, claims of persons referred to it by Congress, in which legislative relief is sought; and claims referred to it by the heads of the Executive Departments, involving disputed facts, or controverted questions of law, dependent upon the amount in controversy, or the importance of the questions at issue.

An appeal to the Supreme Court of the United States is allowed on behalf of the United States, when the adjudication is adverse to it, and on behalf of the applicant or plaintiff, where the amount in controversy exceeds three thousand dollars, or where his claim is forfeited to the United States by the judgment of the court.

The right to sue in this court is not dependent upon citizenship of the parties, or subject matter of the proceeding as it is prescribed by the Constitution for the federal courts generally. It is therefore a tribunal *sui generis*. The cases, in which the United States permits suits to be brought by persons against it, are pertinent to the judicial department of the government. The cases referred to it by Congress are pertinent to the legislative department, the adjudication of which by the court must be designed to relieve the committees from the labor and drudgery of investigating and deciding upon the merits of the claims presented for legislative relief, and the adjudications cannot be conclusively binding upon Congress, any more than the well considered report of the committee; otherwise than upon the supposition, that it can and will submit its judgment of the merits of a claim to the judgment of persons, who are not members of Congress, and have no constitutional right to participate in their duties of legislation imposed on them by the Constitution. The cases referred to that court by the heads of the executive department of the government, it is the constitutional duty of its officers to investigate and decide according to their own judgment of the merits of the claims unless indeed it is competent for Congress, the legislative department, to provide a tribunal in the judicial department to conclusively determine for and direct the executive officers how they shall perform their sworn duties, in matters pertaining peculiarly to the executive department of the government.

Upon certain contingencies also, the wisdom of the Supreme Court of the United States, the head of the judiciary, may be appealed for the correction of any error, that may be committed by the decision of this court upon such matters pertaining to the legislative and executive departments, as well as those pertaining to the judicial department.

The government of the United States was divided into three distinct and separate departments, so that the independent action of each one of them upon the subjects assigned to each, within the scope of its constitutional authority, would operate as a check upon the other departments, in any violation of, or excess of power assumed, under the Constitution by either one. This can be done only by such action on the part of each one as will maintain and strictly preserve the distinctive identity, as one separate part in the system of government. It was founded also upon the assumption, by those who devised and adopted it, that the offices in each department would be filled by persons competent to investigate and determine whatever of law or fact, however abstruse, diffuse, and complicated, that might be involved in the performance of their official duties, without any official advice, direction or compulsion, from the officers of the other departments,—without shirking from responsibility by the creation of boards, courts, or

commissions, instituted for the purpose; specimens of which we have of late years had instances,—notably the returning boards and also commission, partly composed of justices of the Supreme Court, known vulgarly “as the commission of eight to seven,” to which was assigned the duty by Congress to investigate and determine for it, the question then presented to Congress to decide under the Constitution and laws, as to who had been elected President of the United States.

This habitual practice of the courts in the States of issuing the writs of mandamus and of injunction to judicially dictate to the heads of the executive department what they shall and shall not do in the performance of their appropriate duties as executive officers, is on a par with the other things resorted to.

Such means adopted to aid or direct the persons, elected or appointed to fill the offices of the legislative or executive departments, by persons in the judicial department, or in boards, courts and commissions, not provided for in the Constitution, is a glaring recognition of the failure of the safe equipoise of the government, moved along within its limited and bounded sphere of constitutional action by co-operative action of the three departments, legislative, executive and judicial; or if not that, it is indubitable evidence that those who have administered those departments have been unmindful, or have not duly appreciated the action in each one, necessary to preserve distinctively their separate independence, and complete co-ordinateness, as was designed by the framers of the Constitution, and which was the boast of its admirers, as the great American improvement in the science of government. Speaking of departments, reminds me not to omit to refer to the agricultural department, which we may expect to be established in the regular course of events, judging from the progress agriculture has made gradually with increasing favor during forty years, being engrafted upon the government, as one of its objects, to which its power of collecting and expending money has been applied. Its history is interestingly curious. Congress was given power (8.) “To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.” The manner in which the progress of science and the useful arts was to be promoted is so specifically set out in this clause, that it would seem to be difficult to imagine beforehand how it could be made subserve the purpose of promoting agriculture also. A law was passed in pursuance to it providing for whatever was necessary and proper for carrying into execution the power granted, by having applications for discoveries examined and passed upon, patent rights granted, and publications made in book form, and distributed, exhibiting the models, and giving descriptions of the inventions that were patented. After a while it was noticeable that those books

called "patent office reports" contained letters from farmers, planters and gardeners, and occasionally scientific disquisitions about raising crops and agriculture generally, and in the course of time entire books, marked on the back "Agriculture," were distributed by members of Congress to the people, their constituents. Seeds of grains, of the field and garden vegetables, of cotton, of flowers, of bulbs, of plants, of vines, of shrubs and of trees, both rare and common, were gathered up by the patent officers from the four quarters of the world, and sent through the postoffices free of charge to the people of the United States. The business became so extensive and important by its gradual growth, that it could no longer be sheltered under the wing of patent office, and it was made a separate bureau, "The Bureau of Agriculture." The business is still growing in proportions and favor, and if it is an object to which the powers of the government should be devoted in promoting the private pecuniary interest of the people its relative importance compared to other industrial products, would seem to require that it should be elevated into a separate department, with a secretary of agriculture; and, as that is yet by far the greatest industrial interest in the country, and as it is the substratum foundation of all the varied material developments from which wealth and civilization emanate, he should occupy the position of *Premier* in the cabinet of the President. Nothing further need be said on this subject than that the word agriculture is not contained in the Consritution of the United States.

Enough has been said to render it obvious that some other provisions, besides those that have been discussed, must be found in the Constitution, whose construction by the many good, conscientious, intelligent and patriotic citizens, who have participated in the administration of the government, could possibly justify the exercise of the powers granted, so as to produce the various results that have been adverted to. There must be provisions, that have been understood to vest in the government a competency in carrying on its administration, and in promoting the general and special interests of the people, as fully in every respect as an absolute sovereignty could, save and except only, so far as it is limited and restricted in its objects, and powers of governmental action, by the express restrictions and limitations of the Constitution. It is to be presumed, that such provisions are to be found in the preamble to the Constitution, and in the taxation clause, in both of which the expression, "the general welfare," is used. The taxation clause reads as follows: "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

It has been before stated, that for every object, intended to be accomplished by the government of the United States, as a limited government, there was expressed in the Constitution a delegation of power to be used in the accomplishment of such object, and no other object indirectly by the use of it.

The meaning, therefore, of this clause was and is, that Congress shall have power to raise money to be expended in providing for the "general welfare" of the United States as a government, by carrying into execution all of the powers granted to Congress, and all other powers vested by the Constitution in the government of the United States, or in any department or officers thereof.

Or in other words, the "general welfare" of the United States was to be attained as an object, which should result by the exercise of the taxation power in the collection and expenditure of money, in the execution of the powers, and those only which have been delegated to the government as specified in the Constitution. That this is the correct meaning of that expression is abundantly evidenced by the meaning attached to it, when the Constitution was adopted, and when previously it was used in the articles of Confederation, and when it was used by the Congress, held from the commencement to the end of the struggle of the colonies with the mother country.

To effect the various objects by the government, which have been adverted to, it must have been understood to mean, that Congress could raise and expend money for any and all objects and purposes whatever, that it should deem to be promotive of the general welfare of the *people* of the United States, unless there was to be found some clause of prohibition in the Constitution. Or in other words, the general welfare of the United States was understood to be tantamount to the general material and social prosperity of the people of the whole country, in all of their industrial pursuits, and that Congress could constitutionally exercise the powers granted to it in such a manner as to directly and indirectly accomplish those general objects. For instance, laws could be so passed in laying duties on importations as to indirectly give substantial aid and protection to persons engaged in home manufactures of various sorts, and thereby also give employment and adequate remuneration to labor, and by the same sort of indirection the general trade of the country could be extended and enlarged by laws passed to carry the mails by water to distant foreign countries, and as the promotion of agriculture would tend to produce those general results, by enlarging the production of the country, money could be expended to furnish the people, who followed that business, with information, and other more substantial aids, in protecting their employment of labor and capital in it.

That this could not have been the meaning of the term "general welfare," as it was understood by those who framed and adopted

the Constitution, will be made evident by ascertaining its frequent use previously in the struggle with England, and its well established meaning, when then used, and by a proper construction of the taxation clause in which it is found, guided by the light of the circumstances, and purpose attending its use previously; and by reference to other clauses in the Constitution, which raise a violent presumption against any construction that such a meaning could reasonably have been attached to it, when used in the Constitution.

In the Congress of 1774, at Philadelphia, the delegates were commissioned, by each of the colonies there and then represented, by a written authority given to each of them, "to meet and consult together for the common welfare." The common welfare then consisted in seeking by argument and remonstrance, jointly made, to procure from England the recognition of the political right of each colony to tax itself, and to induce England to desist from claiming and exercising the right of taxing the colonies for the general revenue of the kingdom. The term "common welfare," related to the political rights of each of the colonies, as a local government, and to nothing else, for there was then nothing else in issue.

The Congress that met in May, 1775, were given by the colonies respectively additional authority to concert, agree upon, order and prosecute measures for the same purpose. This increase of authority was made necessary by the fact that hostilities had commenced near Boston.

Such was generally the tenor of the instructions of each of their delegates, until the adoption of the Articles of Confederation, on 1st of March, 1781,—and during all that time the Congress was a mere agency, acting first for the colonies, and then for the independent sovereign States, into which the colonies had been converted. Whatever Congress did, had reference to the public defense, and to the general welfare of the associated local governments in respect to their political status, and not in reference to their internal government, or to promote the private pecuniary interest of their people. And the same may be said in regard to the federation of the States, formed by the Articles of Confederation, a draft of which was completed and submitted to the States the 15th of November, 1777, and adopted and put in operation March 1, 1781. The States did not, by those articles, confer upon the Congress a single power authorizing it to do anything to promote the private pecuniary interest of any person, or to encourage any private pursuit or business. The Articles of Confederation read as follows:

"Art. 3. The said States hereby enter into a firm league of friendship with each other, for their common defense, the security of their liberties, and their mutual and general welfare, and bind

themselves to assist each other against all force offered, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever."

Here the words "general welfare" were used to express the condition that the States would be in, if their joint power should succeed in preserving their political independence and power of self-government, for which they were then struggling.

"Art. 8. All charges of war, and all other expenses that shall be incurred for the common defense and general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State," etc.

By the exercise of what *powers* could the general welfare of the Confederation be accomplished? The answer is, by such powers as had been delegated to it,—for it could rightfully exercise none others. What *objects* could be accomplished by the federation as a means of securing and maintaining the general welfare? The answer is, that as the Articles of Confederation expressly indicate the objects within its jurisdiction, it could apply the powers alone which were delegated to it, to accomplish such objects, and none others. And as the promotion of the private pecuniary interests of individuals, or classes of individuals, were not indicated as objects to be promoted by it to secure the general welfare, it had no powers given to it to be applied to accomplish such objects, and therefore it never, while it existed as a government, attempted to accomplish such objects by its action.

This history of the frequent use of the term "general welfare," exhibits two important considerations in relation to it, to-wit:

First, that it had a fixed and definite meaning, as expressive of the good condition, the successful operation, the general welfare of the government,—the political safety and well-being of the States united, first under the Continental Congress, and afterwards under the Confederation.

Second, that the general welfare that was attainable at all, had to be attained by the exercise of such powers, and only by such powers, as were delegated to the Continental Congress first, and then afterwards to the federation.

It has been held in our highest courts, that a word, or an expression, that has been used in a constitution, in a statute, in a deed, or in a written instrument of any kind, must be held, when afterwards interpreted, to mean exactly what it meant at the time it was so used. It is important to notice the fact that in 1787, when the delegates were engaged in framing the Constitution, they were then living under the Confederation, and had been appointed with the express authority, by their respective States, to amend and reform the Articles of Confederation, so as to form a more efficient

government. They must, therefore, have had a perfect knowledge of the meaning of "the general welfare," as used in the Articles of Confederation, and also of the powers intended to be exercised, and that had been exercised since March, 1781, by the Confederation, to attain to the condition of "general welfare" as an object. The fact that they used the term "general welfare" in the Constitution, that they then formed, in the same connection, that it had been used in the Articles of Confederation raises a violent presumption, that they designed it to have the same meaning, and to be attained in the same way. That connection was in the preamble and taxation clause of the Constitution, just as it had been used in the Articles of the Confederation, in the clause stating the objects of the Confederation, and in the taxation clause. It is an established rule of construction in courts, that where a word or expression has been used in a constitution, or statute, which has had its meaning defined by judicial interpretation, or by contemporaneous and continued action upon it, it will be presumed to have the same meaning, when it is afterwards used in the same connection, in the formation of a constitution, or in the enactment of a law upon the same subject, or in the enactment of the same law, changed only in other provisions. The fact that the Constitution provided for a government with more and greater powers for the same States in the Union, was no reason why the words "general welfare" did not have the then usual and well-established meaning, that it had in the Articles of Confederation, especially as the Constitution provided for a limited government, with its powers and objects especially enumerated, just as it was done in creating the Confederation. There is an unanswerable objection to the position, that the "general welfare" of the United States included in its meaning the well-being of the people, in their private pecuniary interests, as well as the well-being of the government of the United States, in the administration of it by its departments and officers.

For the laying and collecting of taxes of some kind, and the disbursement of the money collected by the laws of Congress, embrace nearly everything that the government can do, either under its delegated or under its assumed powers. There are, indeed, very few objects of any kind, that the government has ever accomplished, that did not require for its accomplishment, the laying and collecting of taxes of some kind, in some manner, or the expenditure of money collected. It would have been useless, therefore, to have conferred upon Congress any other power than that in the taxation clause, "to lay and collect taxes, imposts, duties, and excises, to pay the debts, and to provide for the common defense and general welfare of the United States."

And a part of this clause might have been omitted, for it would

have been providing for the general welfare "to pay the debts," and also "to provide for the common defense."

It would have been for the general welfare of the United States to collect and expend money to establish a navy, and to raise an army, when needed, to establish post roads and postoffices, to establish federal courts, to coin money, and to execute every other power expressly or impliedly delegated to Congress or to any other department or officer.

The Congress might also deem it to be for the general welfare to collect and expend money to encourage agriculture, sheep raising for wool, the distribution and breeding of fish for food, the healing of diseased domestic animals, the establishment of agricultural and mechanical schools, and experimental stations, an educational bureau, and an agricultural department; to increase commerce by subsidizing ship lines, to send vessels in search of the north pole, and numerous other such objects, stated in the first part of this lecture, not provided for in the Constitution, otherwise than by their being considered to be for the general welfare, to aid in the establishment of factories in the country, which could be effectually done by an indirection, as may be seen by an examination of the law creating a tariff for their protection. By the same sort of indirection, national banks are given a monopoly in the banking business, by taxing State banks out of existence.

This limited and imperfect reference to what Congress has done suggests the *query*, what is it that Congress can not do to provide for the *general welfare* of the United States?

Republicanism, a hundred years ago, was understood to be the control of the whole body of the people in a country, by their participation in the public affairs, relating to their government.

Democratic representative republics were then formed in America upon the theory, that by giving each man an equal voice in the enacting and execution of the laws, by which he would be governed, he would thereby be able to secure to himself equal rights, and to protect himself from unequal burdens, by the action of the government.

One hundred years experience has so far most signally failed to verify the correctness of that theory. It has been found, that the written Constitutions of a republic may be so construed, as to make the government administered under it an instrument for distributing benefits to the few favored persons, and for imposing unequal and depressing burdens upon the great body of the people, the same as it may be done, and most usually has been done, by tyrannical monarchies.

A PUBLIC LECTURE.

[Delivered in the University, 1887, by O. M. Roberts, Law Professor.]

ON THE VIOLATIONS OF THE RIGHT OF PRIVATE PROPERTY BY
AMERICAN GOVERNMENTS, AND THEIR CONSEQUENCES.

The right of private property consists in the free use and disposition of property by its owner, subject to the rule that it must be so used or disposed of as not to infringe upon or impair the rights of property or of the person of others. This related to the rule as between individuals in a community. It is subject to some qualifications when applied to the relation between government and the individual. This relation was not settled in England until there had been numerous agitations and struggles between the king and his subjects. The English people claimed certain absolute rights as having been possessed by them immemorially, which their monarchs frequently deprived them of. The barons with their retainers took to arms, and wrested from King John the concessions relating to those rights, so claimed, as are contained in magna charta, in which he bound himself as their sovereign that "no freeman shall be taken, or imprisoned, or dissized, or outlawed, or banished, or in any ways destroyed, nor will the king pass upon him or commit him to prison unless by the judgment of his peer or the law of the land." This did not assume to confer rights upon the people, but was a recognition of their previous existence, and a solemn pledge that they should not be violated. This was with some addition confirmed by the charter of Henry III., and for similar objects were procured the petition of right and bill of rights afterward. Thus was, in the course of time, the full recognition of the absolute rights of Englishmen established, being their civil social rights, which commentators have designated as the rights of personal security, the right of personal liberty and the right of private property.

The American colonies claimed to have brought with them and to have possessed the fundamental civil rights as subjects of the British crown, and when they set up independent State governments by delegations of powers, conferred by the people of such State as a sovereign power, they sought to secure these fundamen-

tal rights from being violated by the government created by them by numerous provisions in bills of rights, and in other provisions in the Constitutions adopted by them. It is worthy of notice that the English people sought to protect the fundamental rights against any violation by the executive, the king, being willing to hold them subject to the laws passed by parliament, and to the decision of the courts; but the Americans sought to protect them from violation by the legislature, as well as other departments.

The States in the formation of their government afterward added another fundamental right, which is the right of full toleration and freedom of religion. These rights of personal security, personal liberty and freedom of religion, have generally been so amply protected by laws and the decisions of courts in this country as to require no special consideration of them at present, not being embraced in the objects of the discussion here. The tenure of the private property of the individual is necessarily subject to qualifications consequent upon ordinary and constitutional action of the government, the instances of which will be enumerated.

The private property of an individual may be taken from him by the government of the State, directly or indirectly, for public use upon compensation being made to him, by the right of eminent domain. Over one league of land, being private property, was taken by the State of Texas, upon which the seat of government was located. The State takes the lands of individuals upon which to establish public roads by authority given to counties and railroad companies. It has been held, however, that only so much as may be necessary for the specified public use can be thus taken, and also that the property of one person cannot under this right be taken for the purpose of bestowing it upon another for his private benefit. So the government can take away property through the powers given to the courts, when some other person than the one possessed of it shows his right to it, or when it is done to recover debts, damages, forfeitures, fines, penalties and taxes due and unpaid. Such are the grounds upon which the government can rightfully by force take away the private property of an individual without, and if necessary, contrary to his consent.

Upon none of these grounds has there been such an infringement of the right of property as to require comment, except that of taxation, which will be specially referred to hereafter. Even a cursory review of some of the acts of our government, federal and State, will demonstrate that the fundamental right of property has not been respected in the same degree as in others with which it has been classed. The breaches upon this right have been extended to producing inequalities both in the acquisition of property and the tenures to it when acquired, and even to indirectly and purposely taking from one person and giving it to another for his

private benefit. Our State Constitution sought to establish equality in the acquisition of it, by inhibiting monopolies expressly, which is where the government confers upon a private individual the exclusive right to make profits by following a pursuit which is ordinarily followed by other private individuals for profit. That limitation is not imposed expressly upon the government of the United States in its Constitution.

The State of Maryland passed a law imposing a tax upon the branch of the bank of the United States. The Supreme Court of the United States judged that law to be contrary to the Constitution of the United States and laws thereof, and exempted it from taxes, though it was an institution carried on in Maryland to make profit by and through the means invested in it, being the private property of the corporator. Other banks that may have been chartered by Maryland, and were doing the same business for profit, had to pay the same taxes imposed upon them.

I am not discussing the right or wrong of that decision, but only seek to point out an instance of inequality in the acquisition and tenure to or terms of holding a similar sort of property used for making profits by different individuals in Maryland, produced by governmental action. Again, the federal government established "national banks," which at present number, perhaps over 2000 in the different States, and, as it is said purposely, taxed all the other banks created by the States out of existence. In other words, they had to close out and abandon the business of banking because they would not make profits as the national banks, could on account of the heavy tax imposed on them that was not equally imposed on the national banks. Here was a case of monopoly in banking and an inequality in the tenure to private property, as between individuals in the same State pursuing the same business for private gain to the individual. Similar results are produced by the States passing laws for private corporations, for private purposes for private gain, only in pursuits equally followed by private individuals and partnership.

Under the laws creating them the members of the corporations have their responsibility, and liability, in carrying on their business, limited to the amount of the property invested and kept in the business, whereas the responsibility and liability of the individual, and of the members of the partnership engaged in the same business exactly, and for the same purpose of private gain extends to the whole of his or their property, whether it is engaged in that business or not. Texas has now probably over one thousand such private corporations, with a continued increase in number, as their extra advantages conferred by the government become more and better known. The members of such favored companies, in a long course of prosperous business, may store away by dividends hand-

some fortunes, which the sheriff dare not touch, when by reckless speculation in their efforts, perhaps, to run down the competition of individuals or partnerships in the same business the concern breaks, and is found to be insolvent. Here the State has made a plain difference, in the tenure of terms of holding private property, between individuals of the State, pursuing the private business for private gain. Though this consequence may attend all corporations, it can be justified only when it is created as a governmental agency, to accomplish a public purpose, though it may be pursued for private benefit by the corporators, as in the case of a railroad company incorporated by a law of the State, or a school or some charitable institution. But in the case of a company for raising cattle, for buying and selling lands, building houses and hundreds of other private employments, it is perversion of the true objects of an incorporation, to give them its advantages over other individuals following the pursuits. Under the government of the United States its bonds and treasury notes, used as money, amounting to many hundreds of millions of dollars in value, are exempt from taxation by the States, though owned as private property by the citizens of those States. This is, in effect, giving a bonus to the amount of tax exempted to owners of them by just the increase in value given to them by the government over the value of other bonds and money in the hands of citizens that are taxed.

Passing over bounties given to ship lines, ship building for our coastwise trade, and to various other objects favored directly or indirectly by the government in this country, both by legislation and by the decisions of the courts, it may be well to consider at once the subject of taxation, which has been used as the means for the most flagrant violation of the most fundamental rights of private property. It is said by Justice Cooley in his work on Constitutional Limitations, that an unlimited power to make everything lawful which the legislature might see fit to call taxation would be, when plainly stated, an unlimited power to plunder the citizens. This strong expression is but a common sense utterance in behalf of the right of private property. In every government, therefore, where there is any pretense to the claim of freedom from oppression there ought to be found some limitation to the right of taxation more potent than the mere discretion of the legislative body.

In the present Constitution of the State there is a limitation plainly expressed as follows: "The legislature shall not have the right to levy taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes: The payment of interest on the public debt, the erection and repair of public buildings, for the benefit of the sinking fund, for the support of the public schools and the asylums, for the payment of officers of the government, for the enforcement of quarantine, and

the protection of the frontier." And further it is provided, that "the legislature shall have no power to make any grant, or authorize the making of any grant of public money to any individual, association of individuals, municipal or any other corporation whatever; provided, that this shall not be so construed as to prevent the grant of aid in case of public calamity." And further, "taxes shall be levied and collected by general laws and for public purposes only." Those with other imitations upon the action of the legislature, that might be quoted, point specifically to the object of taxation as being to raise revenue with which to carry on the government of the State. A tax so levied as to effect another and different object under the pretense of raising such revenue, would be a preversion of the powers of the legislature, and be a violation of the spirit of the Constitution of the State. Such should be the rule under any government of limited powers. While our Constitution so clearly and specifically limited the power of taxation, other provisions in it have unfortunately thrown widely open the door for the creation of almost all sorts of private corporations for private purposes. The power of taxation delegated to Congress is contained in the Constitution of the United States in the words as follows: "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States." The United States was the name of the government then in existence under the articles of confederation, and it was continued as the name of the more perfect union created by the Constitution of the United States. If this term "general welfare of the United States" should be construed to mean welfare of the government of the United States in all of its operations performed under and in accordance with the powers delegated to it as expressed in the Constitution, then it should be a plain limitation. The States might well be supposed to have been willing to have granted the power of taxation to Congress. While it is difficult to believe that under existing fear of an absolute power of taxation without limit, which they had but lately gone through a desperate struggle to get rid of, they should have intended to have conferred upon Congress a power of taxation to provide for the general welfare of the people in several States in reference to private pecuniary affairs and industrial pursuits, still it has been believed, and Congress has repeatedly acted and continues to act on it, thereby making the government a paternal government for taking care of the private interest of the people, according to discretion, as to what measures would contribute to the general welfare of the private interests of the people.

The British parliament is limited only by the same discretion in reference to the same objects, which is simply no constitutional limitation at all of the power of taxation in either government.

The promotion of the private interests of the people has been effected in two modes of congressional action, directly by spending the people's money raised by taxation in bounties and otherwise, and indirectly by levying and collecting duties on import. Under one or the other mode Congress has promoted the private interests of individuals and classes of individuals in their private pursuits, from the largest to the smallest objects, and embracing in extent almost the whole range of industries carried on in this country, from helping merchants extend their foreign trade down to dairy-men making butter, and so numerous and diversified are they that an enumeration and explanation of them would fill a good sized volume. A good survey of them would exhibit the most remarkable and the most fertile inventive genius of the American people, that has perhaps never before been displayed by any people, by which they have been enabled, with only a few delegated powers carefully specified and to them expressly limited in a written constitution, to expand them by subtle constructions into a powerful national government, capable of fostering the whole range of the private interests and pursuits of the people, equally as extensive and minute, and in the same manner as it has been done by the monarchies of Europe with absolute unrestrained powers of promoting the private interests and pursuits of the individuals, guided and limited only by their discretion as to the means used in doing it. Under this construction the true object of taxation—to raise and collect revenue with which to defray the expenses of the government—has often been lost sight of. It has been imposed in a way to effect another object relating to the private interests of individuals than to raise the revenue, and even sometimes in a way to prevent the raising of revenue, to enable private individuals to make profits by it in their private pursuits.

A notable instance of this is what is known as a tariff for the protection of home manufacturerers. That was professedly invented to nurse those factories in their helpless infancy, eighty years ago or more. It would seem to be useless now, after so long nursing, to ask when the infants will be able to stand alone, but as that claim for favor might be barred by lapse of time, another has been announced, as we will see presently. For instance, a certain kind of cloth is manufactured both in Europe and the United States, Congress imposes a duty of 100 per cent. upon its original cost in Europe, and in passing through the custom-house at New York the importer pays 100 per cent. to get it. Twenty per cent. imposed would, as it is known, raise greatly more revenue if that was the object, and that 20 per cent. would itself be incidentally a bonus in the way of legitimate protection to the home manufacturer in the sale of his cloth. Then why impose 100 per cent.? The answer is to give the home manufacturer 80 per cent. on the sale of his cloth more than was necessary to raise revenue. Who pays to

the home manufacturer this 80 per cent. more than necessary to raise revenue? The answer is the consumer who buys it from him, the price paid being 80 per cent. more than he could have bought the cloth, whether it had been manufactured in Europe or America, if a duty for revenue only had been imposed on it. This explanation is sufficiently accurate for my present purpose, which is to show that the government has purposely in this transaction in effect taken money from one man, the consumer, and given it to another, the American manufacturer. That is the practical fact, and the object of doing it, whether right or wrong, constitutional or unconstitutional, does not alter the practical fact, which presents a clear case of flagrant violation of the right of private property by the of government to the advantage of one individual and to the disadvantage of another in reference to their private pecuniary interests.

I will not stop to consider all the numerous things upon which a tariff for protection is imposed. It is estimated that where the government gets \$1 of revenue by it the home manufacturer gets \$5 by it, by selling five times as many such goods as are imported. How much money does he make, when the government is annually raising hundreds of millions of dollars by duties so levied? Now, what has been the consequence of this course of action? For more than fifty years past, and even up to the present time, it has been openly announced in the platforms of parties, in presidential messages, and in speeches in Congress and elsewhere, that one of the main objects of this protective tariff was to keep up the price of American labor above the price of pauper labor in Europe, or in other words, it is a bonus paid by the consumer as well for the benefit of the laborer as that of the capitalist for whom he works. This is the lesson that the laborer has been taught from the highest authority, and as the schoolmaster has been abroad in the land, he can now understand it. He knows that the bonus in money in this case, as well as in all other governmental advantages given, comes into the hand of the capitalist, and the law makes no provision for him to get his share of it, which he has so often and so eloquently been told about. It has come to him through the discretion of the capitalist, if it comes at all, so far as the law is concerned. That is a frail security for its coming, and therefore laborers are now, and have been for some time past, putting their heads together to devise a more potent means than discretion, by making it to depend on the necessities and interests of the capitalists to make fair division of the favors of the government. It is only necessary for laborers to look around and see that wherever and whenever large capital is accumulated in the hands of a few persons, its owners apply for some sort of favors to it from the government, by pressing into the lobbies of Congress, or of the legislatures of States, to obtain it. Even the labor saving machinery, patented by the gov-

ernment, falls into the hands of the capitalists for whom they labor, diminishing their chances for employment, for a time, at least. They see and have seen capitalists of all classes of interests, combining in different ways, to keep up prices and to keep down the price of labor. They, seeing and feeling the effects of such combinations, are now, and have been, combining to protect the interests of labor, knowing that it is by the use of their labor that profits can be made by capitalists. Hence labor unions of various sorts, and by different names, have been formed all over the United States, and are still increasing, perfecting the co-operative combinations. They, too, are preparing to apply to Congress and the legislatures for some governmental advantages, at least for the defense of their peculiar interest, against the mere discretion of capitalists who make profits out of their work. All this effort is not so much because the wages of labor are ordinarily inadequate or less than they were formerly as because labor has no security and no advantages given to them by the government, as they can see that accumulated capital has. Thus capital and labor stand in direct antagonism, each arrayed in combinations all over the country. When the combustible materials are made ready for it, a little spark may make a great conflagration, as witnessed in the year A. D. 1886. The 'longshoremen, who had been given the monopoly of labor on the wharves at Galveston by a statute of the last legislature of Texas, strike for higher wages in loading and unloading vessels, which was refused. A man in Marshall is refused employment on the Texas and Pacific railroad there; the Knights of Labor take the matter up for adjustment and apply their remedies without effect.

The struggle then goes to the Gould combination of railroads, carrying it to Arkansas, Missouri, Illinois and on to the other States, and other matters of controversy are brought in. Millions worth of property is involved and endangered, hundreds of thousands of laborers are excited to fever heat, private property is violently seized and the wheels of commerce are stopped, and even personal violence and murder attend this desperate struggle; the peace officers and militia of the States and the courts are called into requisition for the protection of private property and to keep the peace.

Amidst the fury of excitement the tendency of sentiment almost unconsciously was aroused against all sorts of accumulated wealth without taking time for discrimination between the necessary and proper advantages given to public agencies, created by government for public purposes, and those advantages that are neither necessary nor proper.

The anarchists in Chicago, falsely supposing that this great movement was being made in sympathy with their designs, broke out into deeds of outrage and murder. Under this distressing con-

fusion, it is not surprising that remedies should have been suggested without a calm consideration of the consequences to which they would lead. One of them is co-operation between capital and labor. That is simply a partnership formed by mutual agreement that the government can have nothing more to do with than with other partnership business.

Another is for the government to own and run the railroads. If the reason for that is to secure to labor more adequate remuneration than will be given by capitalists, the same reason would force the government to own and carry on all other employments requiring large numbers of laborers, such as factories, mining operations, iron works, etc.

We are not now prepared to contemplate the conditions and operations of any government placed in such a position. The most favorable remedy that has been proposed by statesmen, including the conservative President, Grover Cleveland, is by arbitration, provided for by the government. Four of the States—Iowa, Kansas, Massachusetts and New York—have already made haste to arbitrate the differences occurring between employers and their employes. These laws provide for a board of arbitration, to which the disputants may agree to submit their differences. In the first three the board, after being selected by action of the parties, is commissioned or licensed to act by a court of the State.

In New York the board is appointed by the governor for the year. In Massachusetts the submission can only be made in case the subject may not be made the subject of a civil suit or bill in equity—that is, if the question is one of judicial cognizance, the parties must apply to the courts and not to this board for settlement. In Iowa and Kansas the award is simply final and conclusive on the parties in ordinary cases, but when an award is made and accorded a specific sum of money, the proper court may upon motion enter judgment thereon; so that in those States the arbitration includes matters of debt found to be due, which is of judicial cognizance, as in other cases of arbitration, as that remedy is well known as a substitute for a suit and trial in court recognized by all of the States. It is obvious, however, that in all of those States, the main object in passing these statutes is the same as that expressed in the statute of Massachusetts, which is to provide an arbitration for such cases as are not of judicial cognizance by a suit at law or by a bill in equity in a court having jurisdiction of the subject matter of the suits or bill. The matters to be settled are such as where the employes demand of their employers an increase of 10 per cent. in their wages, or the employers propose to reduce the wages of their employes 10 per cent., or increase the time or amount of labor on the same wages, or where the employes demand that a laborer who has been dismissed shall be taken back in the service of the employer

again, or where there shall be a disagreement about anything relating to the employment where a change is sought by either side and not acceded to by the other. They all contemplate the making of an executory contract between the parties concerned, to be by each of them performed in the future for an indefinite time. The making of an executory contract between two persons about a matter of private business is, and must be, discretionary on both sides, and is therefore beyond and outside of any governmental action whatever under the constitutional powers of our government.

The parties may call in private assistance by reference to others to help the discretionary adjustment of the contract between them, but they have no right to call for any interposition of the government, in any of its departments, to help them in adjustments, because no departments of our government are invested with any powers which relate in any degree to the discretionary act of making an executory contract by and between two persons about a matter of private business.

The government may prescribe what shall be a valid contract or what shall not, or how it shall be evidenced to be valid, or when a contract is broken the proper remedy in court may be given, all of which are rules of action, prescribed and contemplated; or presuppose the discretionary action of the parties to have been previously exercised in making the contract without any interference, hindrance or assistance of the government in the making of it. To bring this subject to the test by a homely example, the legislature has no right to swap horses for people, and it follows that it has no right to pass a law authorizing the appointment of a horse jockey to travel over the country to help people swap horses.

The judiciary department has no such right, nor has the executive department. The confusion of ideas is thrown around this proposed remedy by misnaming it an arbitration. That is a misnomer. An arbitration has been long known as one of the remedies to redress a legal inquiry by the parties themselves, either with or without the aid of a court.

The business of the arbitrators, like that of a court, is to investigate the antecedent facts and transactions of the parties in relation to the matter in dispute, and to draw their conclusions from them, as to whether one of the parties has been deprived of a legal right by the other, and if so, they make their award describing what one of them should recover of the other, as a particular piece of property, a debt or damages to a certain amount, just as it would have been determined by the verdict of a jury, had the case been brought into court by suit, and provision has been generally made by law, to have the award made the judgment of a court, in whatever court would have had jurisdiction of the subject matter, that had been arbitrated. It is obvious, then, that the proposed

remedy, so-called arbitration, has no analogy in substance, to the old and favored remedy by arbitration, authorized by our laws. The want of constitutional authority to provide such a remedy for the adjustment of such matters of dispute, as have been previously mentioned, may be illustrated further, by tracing out the effect of each step in its progress. Supposing the law to be passed as that in Kansas, and the disputants to have selected their adjusters (so-called arbitrators). It is made by the law the duty of the court to issue them a license, or commission, to act, and when their award is made and presented to have it recorded.

This being not a judicial proceeding, the court may refuse to issue the license, and also refuse to have the award recorded in court for the same reason. It has been held by the highest judicial authority, that the legislative department can not make it obligatory upon a court to do an act not judicial in its character, and relating to a subject of which the court had no jurisdiction. But suppose the court should humor the effort at pacification, and issue the license and record the award, which is simply the adjusted executory contract made by the parties, which is declared by the law to be final and binding on the parties.

What legal effect is given to this contract by its being thus recorded in a court? The answer is, exactly the same, and no more than if it had been written out on a sheet of paper, and stuck into the pigeon-hole of some friendly lawyer's desk, who had it in his custody for safe keeping. Still the legislature has gone through the formality of passing an act prescribing particularly all the proceedings in the remedy, and the court has given it the sanction of its authority, which holds out the delusive appearance that the government has done something within its constitutional authority, and may do more if necessary.

The great danger is, having started out on that line, emergencies may arise that will require it to go further and still further, until some of the dearest rights of the people may be impaired or violated. It should be recollected, that in the transactions, which induced the recommendation, and in some of the States, the adoption of this new and extra governmental remedy, were involved the right to private property, the right of personal security, and the right of personal liberty—the fundamental civil rights upon which our social organization is founded. The adoption of that extra governmental remedy tends to lead off from and supercede the proper remedies, that are within the constitutional power of the government, which are the passage of other laws, if necessary, and the enforcement of them for the protection of private property in its possession and use, and the enforcement of personal security, and personal liberty, as those rights may pertain to all of the persons who are connected with this struggle between capital and labor, and when all parties shall be made to understand by the con-

stitutional power of the government, exactly what their rights are, that will be the best security that they will peaceably abide by them.

If the government can not protect private property by such constitutional means, then it is a sad failure as it is now organized, and property will have to look to some other organization of government for its protection, for in the end, property always has and always will protect itself, by fair means if it can, but by any means if it must. It is a great power, backed by human selfishness, that prefers any government that can and will protect it. But the State of Texas, having given to railroad companies a large bonus in lands and charters, with all of their advantages, including the right to take the lands of persons for their track and right-of-way, upon making compensation therefor, and also the monopoly of exclusively using the roads constructed by them for transportation and travel, with the right to charge therefor, has not the government of this State some constitutional power to require the companies to give a fair compensation to employees, whose labor is necessary to carry on the business? The answer is not any more right than to force laborers to work for what the State might stipulate as being fair wages.

Fortunately, the relation between the State of Texas and its railroad companies, and the power of control, which the State has over them, is not left to deductive construction, but is well defined by laws under which they are constructed, and by the Constitution of the State, adopted in 1876. In that instrument, it is provided that railroads heretofore constructed, or that may hereafter be constructed, in this State, are declared public highways, and railroad companies common carriers.

The legislature shall pass laws to correct abuses, and prevent unjust discrimination and extortion in rates of freight and passenger fares on the different railroads in this State; shall from time to time pass laws re-establishing a reasonable maximum rate of charges for the transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties.

From this it is plain that the power of regulation by the State has reference to the accommodation of the people in transportation and travel, and not to furnish labor to the employes of the company, or give opportunity for labor on the roads, or to regulate the wages of it; and even its constitutional mode of regulation, for the objects contemplated is limited to the passing of laws for the regulation, and to having such laws enforced by proper penalties, which penalties can only be recovered by suits, or prosecutions in the courts of the State, and from this it follows that it can not assume the management of the roads in this State, by commissioners appointed to prescribe terms of transportation and fare in any case whatsoever, for it has been often held, in our courts, that

when a power to do a particular thing, in a specified way, has been conferred on a body, and that body is expressly required to perform it by its own action, it can not constitutionally depute the power to do it to another body, created to act as a substitute for it. This, then, is the tenure by which railroad companies have and hold a right of private property in this State, in all of the materials of which their roads are constructed, upon the right-of-way, and their rolling stock, and the gross proceeds in money, earned by the running of their roads, all of which is as much their private property as are the lands, farming stock and implements, and money derived from the crops of any farmer in this State, and the State has no more right of interference in the adjusting of the wages of labor for railroad companies than for farmers in the State.

Suppose, then, that labor unions should be formed to such an extent as to dictate their own terms as to the price of wages. They have a right to do it if they can, provided their conduct in doing it is peaceful, and they do not intimidate others, or commit violence upon the persons and private property, engaged in carrying on railroads, or otherwise illegally interfere in the business of railroad companies. In that event, should it happen, it would simply result in co-operation between capital and labor, with a division of the profits, as agreed upon by the parties, just as a compromise is effected between competing lines of railroads. If that should fail to be practicable, the State would have to modify or change the mode of providing transportation and travel for the people.

It will be time enough to consider how that could or would be done when necessity for it arises. In the natural order of things, all trade, including the wages of labor, was, and should be, governed by the rule of demand and supply.

That rule is not now satisfactory, and the cause why it is not, as well as the cause why labor and capital are now arrayed in such hostile antagonism, is readily traceable to the undue advantages given by our government to accumulated capital in numerous ways. It is hardly probable, or to be expected, that our government can or will remove the causes that have brought evil times upon us by a divorcement of government from all sorts of favoritism, by an equal uniform ad valorem tariff on all imports, and by a repeal of all laws, and a reversal of all decisions which confer unnecessary governmental advantages on private property or individuals.

I fear the drift of the money power is driving it too strongly to an unknown destination to be arrested now. Governments, indeed, rarely go backward to reform evils, hence a great burden of responsibility is thrown upon the statesmen of the day, to steer the ship of state safely through the conflicting elements that now beset our organized social existence in this country. However, this

struggle may progress in the future, or what may be the result of forcing the State into action, it will be well that it should be kept in mind, and acted on, that the preservation of our fundamental civil rights is far more important to the well-being of a free people than cheap goods, cheap freight and fare, and high wages for work, and anything else connected with the private pursuits of individuals that are subsidized by the action of the government.

[NOTE.—Since the delivery of this lecture, the Constitution of Texas has been amended so as to authorize a railroad commission.

A PUBLIC LECTURE.

[Delivered in the University, Dec., 1889, by O. M. Roberts, Law Professor.]

THE HISTORY AND BURDEN OF TAXATION.

Taxes are contributions in money, imposed upon any individual for the support of government. The purpose for which these exactions are made depends upon the nature and objects for which the government is instituted and carried on. In some countries governments are organized to confer special privileges, advantages, benefits and protection upon the favored few by imposing burdens upon the many. The disparity between the two classes may become so great that the only consideration given by the government to the mass of individuals for their contributions in the shape of taxes is the right to live and to work. They are protected in that right as necessary instruments in sustaining the government, so administered to promote the prosperity, grandeur and happiness of its favorites. The necessary result of this is, when the population becomes dense and the avenues of employment are all crowded, that the rich become richer and the poor become poorer, until the very poor must run the gauntlet through life between the poorhouse and the prison. That condition of things, approximately or in full maturity, is the criterion by which such a government may be known, whatever may be its form, so called, as surely as the tree is judged by its fruit. This state of things, existing in a greater or less degree in the different countries of Europe, has been for years past driving hundreds of thousands of their people to the United States and to other parts of the world. May not the vast accumulations of wealth here recently acquired in the hands of the few, and the widespread murmurings and discontent of the many, give warning to us that even in this free country there may be malign influences at work strongly tending to produce the same result? It has been estimated that there have been over twenty thousand strikes during the ten years last past, and during that time the protection of nearly every material interest has been sought by a separate combination of those persons who are engaged in it, thereby exhibiting society, in regard to its pecuniary condition, as divided into almost in-

numerable contending antagonisms. This phase of society is new in this country, and its origin and existence must be traced to the management of public affairs on the subject of taxation by our governments, so long continued as to inaugurate the process of making the rich richer and the poor poorer. The American doctrine originally was the very reverse of this, it being that the government was instituted and existed for the people, and not the people for the government. This doctrine was established when the States dissolved their connection with England and founded their governments upon the sovereignty of the people in each State. The expressions used in their constitutions, defining the relation between the government and the people were different in different States, though intended to announce the same principle in effect. They were such as follows: "All power is inherent in the people; all free governments are founded on their authority and instituted for their benefit." All men are born equally free and independent, and have certain natural, inherent, and inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." All power residing originally in the people, and being derived from them, the several officers of government vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them." "No man or corporation, or association of men have any other title to obtain advantages or peculiar or exclusive privileges distinct from those of the community than what arises from the consideration of services rendered to the public." "Government is instituted for the common good; for the protection, safety, prosperity, and happiness of the people; and not for the profit, honor, or private interest of any one man, family or any class of men. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property according to the standing law. He is obliged consequently to contribute his share to the expenses of this protection, to give his personal service or an equivalent when necessary. But no part of the property of an individual can with justice be taken from him or applied to the public use without his own consent or that of the representative body of the people."

Their constitutions did not confer upon their legislatures any power to levy taxes, except that which was implied from the grant of the power of legislation; nor, except in Maryland, did they contain any express direction as to the mode of levying taxes, or as to the kind of taxes to be levied. Doubtless reliance was placed upon the announcement of the general principles in their bill of rights as guides to their legislatures in justly imposing taxes upon the people; as then representation and taxation would go hand in hand

and measures would be carried by majorities of themselves; and those who should be selected to make and execute their laws were their agents; and the equality of all men and the equal protection of their rights of person and property were secured; and as government could only demand from the individual an adequate compensation for such protection, and could not impose burdens upon one man or class of men for the private advantage or profit of another man or class of men, the people of the several States had a right to expect that the burden of taxation upon each person would be made to correspond with the rights of person and property protected for him by the government. In that event a poll tax should be imposed upon every one and a tax upon his property in proportion to its value, and an equitable occupation tax upon persons in trade who might handle transient property that could not be reached by an annual ad valorem tax. Such a system of taxation would have been recognized as just by the great mass of fair-minded men. Rulers of men of all kinds and everywhere, whose rule is impartially just, will meet with a cordial acquiescence and approbation from those whom they govern; whereas partiality, favoritism, shown directly or indirectly to one class of men, and prejudice and disfavor shown to another class, will inevitably, sooner or later, engender antipathies, disgust, jealousies, discontent, strife and injustice.

The people of those States in founding their government upon the rule of even-handed justice as between man and man, controlled by a majority of themselves, could hardly then anticipate that the democratic majority could be manipulated so as to exercise the most irresponsible and flagrant injustice over minorities, and sometimes even over the great mass of the people, for the special benefit of favorite classes of persons. They could then hardly anticipate that the agents whom they would put in power to fill the offices, legislative, executive, and judicial, might by their combined co-operation construe their powers so as to pile precedent on precedent in the assumption of powers not intended to be granted to them, and to impose burdens upon the people by way of taxes so imposed as to directly or indirectly accomplish objects not embraced in their constitutions. They may well be excused for not having understood then what one hundred years of experience in free democratic government might have taught them, and enabled them to have guarded their interests by specific directions, restrictions, and limitations upon the power of taxation granted to their governments. Texas has in the main carried out the just principle by making the burdens of taxation upon the people correspond with the protection of their rights of person and of property.

Having established a democratic representative republic in 1836, the first direct tax imposed by its Congress was an ad valorem tax

of one-half of one per cent. on all real, personal, or mixed property, a poll tax of one dollar, and tax on occupations proportioned generally to the amount and character of their business; and in levying duties upon imports the same rule was generally followed. The law having been changed in 1840 by imposing specific taxes on articles of personal property, it was determined by the convention of 1845 to establish permanently the mode of imposing taxes by a provision in the Constitution of the State requiring all property to be taxed according to its value, and authorizing the legislature to lay an income tax, and to tax all persons pursuing any occupation, trade, or profession, except that those following agricultural and mechanical pursuits should not pay an occupation tax. So thoroughly and universally has this *ad valorem* tax on property been approved that it has furnished the principal means to support the government of Texas for more than fifty years. Having been adopted in the Constitution of 1845 it was continued in those of 1861, 1866, 1869, and 1876, and if it had not met fully the sense of justice of the people it would not have been continued so long when there were so many opportunities for changing it.

This, then, is the verdict of the people of Texas, that as the object of government is the protection of persons and property, a tax upon persons and their property should be levied and collected to support it. In our present State Constitution are found directions, restrictions, and limitations upon the power of taxation that confine it strictly to taxes levied for the accomplishment of such objects as are recognized by the Constitution as parts of the government of the State, and of no others. The only means left of accomplishing objects indirectly is in the levying of such occupation taxes as either favor or discourage some particular pursuit, which has seldom ever yet been practiced in this State to such an extent as to have aroused disaffected combinations to evade or violently oppose the law. Such indirections in using the power of taxation to the injury of one class of pursuits or to the gratuitous advantage of others are generally odious, and are fraught with evil consequences to any government that persists in such a course of action. The effort to produce moral results or material benefits to the community indirectly by imposing high taxes upon particular pursuits is seldom effective and is wrong in principle. Fortunately civilized society has other agencies to correct attendant evils better than by placing the government in the position of being an enemy to any one honestly pursuing an avocation permitted by law.

The legislature is prohibited from directly or indirectly conferring benefits upon particular pursuits or persons under the power of taxation, because the Constitution provides that "taxation shall be equal and uniform," that "occupation taxes shall be equal and uniform upon the same class of subjects," and that "taxes shall be

levied and collected by general laws and for public purposes only." Exemptions from taxation may be made on property devoted to religious or educational purposes, and upon particular persons only in cases of great public calamity by a vote of two-thirds of both houses of the legislature.

Notwithstanding the equity and justice of this system of ad valorem taxation upon property in principle, there may be a difficulty in securing equality in its burdens upon different persons proportionally by the mode provided for the assessment of taxes, which should demand the utmost care and wisdom of the legislature to secure its perpetuation as a system of taxation in the State.

Indeed it would be more correct in principle for the State to rely more than it does upon an ad valorem tax upon property in collecting its revenues. For an occupation tax can be justified only upon the ground of reaching transient property that cannot be reached with facility by the mode of assessing permanent property that is in the possession of its owner on the first of January each year. The force of that ground is much weakened when it is considered that in most occupation taxes their payment is made in the first instance by those persons who are taxed, but is eventually paid by those persons who deal with them, and is therefore often a tax upon the labor and industry of the persons who deal with them. This is obvious in the case of an occupation tax imposed on merchants.

Permanent property is human labor, materialized into shape, producing values in the way of profits. A very small portion of those profits, taken as taxes, will support the government without taxing the labor of those who are in the struggle to acquire it. In a republic, it surely is the interest of the political organization to facilitate the acquisition of property by the greatest number practicable in the association by honest labor, without placing any drawback upon their laudable efforts. That can only be done by making the property already acquired bear mainly the burden of supporting the government. Certainly the greater the number of permanent property holders in a State, the greater will be the means of progress in civilization. The object of good government should be to shape its taxes so as to promote that result. The State has an inducement to rely mainly on taxation on property, in view of the fact that the government of the United States levies and collects its revenues, directly and indirectly, upon the labor and industry of the people to a degree that excludes the State from resorting to that source for the support of its government.

In order to exhibit plainly the fact that the government of the United States has collected its revenue from the labor and industry of the people, and the reason of it, it is necessary to refer to the provisions in the Constitution relating to taxation, and the construction of them, which has gradually led to an excessive in-

crease of revenue beyond the necessary support of the government.

The government, under the Articles of Confederation, was supported by contributions from the States in proportion to the value of the lands, and improvements thereon in each State. This showed that its framers thought that the substantial property of the country, which then consisted mainly in its real estate, was the proper subject of taxation for the support of the government. It might reasonably have been expected that the same principle would have been adopted for the succeeding government, so soon afterwards instituted by the adoption of the present Constitution of the United States. That expectation, if entertained, has failed of realization, by a provision being inserted in the Constitution that "no capitation or other direct tax shall be laid unless in proportion to the census." This has been held by the Supreme Court to apply only to a poll tax and a tax on lands. And a further provision was inserted that "representatives and direct taxes shall be apportioned among the several States, which may be included in this Union, according to their respective numbers," etc.

In addition to the difficulty of fairly adjusting such a tax on land, the want of correspondence between the number of people and the value and amount of land in each State, such a tax would be so unequal upon the citizens of different States, and consequently so unjust, that it has seldom been adopted as a means of supporting the government, and has been abandoned when the emergency no longer existed which caused its adoption. Congress, as a permanent policy in raising revenues, has acted upon another provision which declares that "the Congress shall have the power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

Thus, as it was designed that the federal government should exercise only such powers as were delegated to it, it became necessary to specify the power to lay and collect the different kind of taxes, and to express the purposes for which that power was granted. If by this clause it had been universally understood that the general welfare of the United States (meaning the welfare of the government of the United States) should be accomplished only by the exercise of the powers delegated to it in such manner as to effect only the objects specified in the powers delegated, and not incidentally, other objects which were not specified, the taxation under this provision would have been laid and collected with direct reference only to what was necessary to support the government. A construction in direct opposition to this has caused a continual contention and political strife, and has led to all of the extravagant expenditures from the meeting of the first Congress to

the present time. That construction is that the words "general welfare of the United States" mean the general welfare of the people of the United States in their material and pecuniary interests, and in whatever else would contribute to the common good of the country and the power of the government, and that Congress could rightfully exercise the powers delegated to it in such a manner as would effect such objects indirectly as well as directly, in accordance with its own judgment and discretion.

Similar in effect was the construction of this clause by President Monroe in his special veto message of May 4, 1822—thirty-three years after the organization of the government under the Constitution,—in which he says that he has changed the view which he was inclined to take of this clause in the more early stage of the government. He proceeds to expound the construction of it by dividing the clause into two parts, asserting that the first, "to lay and collect taxes, duties, imposts and excises," conferred the power of taxation without any limit; and the second, "to pay the debts and provide for the common defense and general welfare of the United States," conferred the power to appropriate the money collected, not limited to the objects expressed in the other powers granted to the government, and limited only by a sense of duty on the part of the members of Congress; and concluded by saying: "My idea is that Congress have an unlimited power to raise money, and that in its appropriation they have a discretionary power restricted only by the duty to appropriate it to purposes of common defense, and of general, not local, National not State benefit." Of course every one will understand that the discretion of Congress practically determines its duty.

Reference is here made to this construction of the power of taxation and appropriation, because it is an epoch in the political history of this country. It was an abandonment of the principles of the Virginia resolutions of 1798 and 1799, under which he and his two predecessors had been elected, by what was then called the Republican party, in opposition to the federal party. After referring to the action of the government in appropriating money to build numerous roads by consent of the States through which they passed, to facilitate travel through the country, and appropriating money for pensions, and for the relief of certain sufferers, he explains the reason of his change of opinion about the power under this clause by saying that it is "better to admit that the construction given by these examples has been just and proper than to deny that construction, and still practice on it—to say one thing and do another." He maintained that Congress had the power to appropriate money for the construction of roads and canals that would facilitate the operations of war and mail service, and thereby promote the purposes of commerce and political intelligence, and bring into market the public lands, but denied that

any such control could be exercised over them by the federal government as would interfere with the rights of the States. As he regarded the bill objectionable on that ground he vetoed it. He then took a broad view of the great advantages to the Union by a general system of internal improvements by the general government, which had become the more necessary by the acquisition of Louisiana and Florida, and recommended an amendment of the Constitution giving it the necessary power. At the next session of Congress President Monroe approved an appropriation for a general system of internal improvements, embracing surveys of numerous routes for roads and canals, rivers and harbors. At the same session he approved a law of Congress increasing the duties on imports in a manner purposely to afford additional protection to American manufactures.

The majorities in favor of the law were, in the Senate four, and in the House five. In the vote on this bill there was a division between the members of the North in favor of it, and of the South against it, which has continued generally to exist up to the present time.

The history of this period is important for two connected objects, showing that duties were levied for protection with revenue as an incident, and not as it was previously done from the time of the first Congress, for revenue with protection as an incident; and as showing that appropriations were made for a general system of internal improvements, which opened the way for appropriations for any and every other object that Congress might deem to be for the general welfare, under the most liberal construction of those terms, not confined to the objects embraced in the express and implied powers of Congress. These measures were approved and enlarged by the succeeding administration of President John Quincy Adams, which encouraged the manufacturers of the Northern States to combine their efforts to increase their protection by an increase of duties upon foreign goods similar to those manufactured by them. For that purpose they held a convention at Harrisburg, Pennsylvania, in 1827, and passed and sent a memorial to Congress urging an increase of protection, which was complied with at the next session by enacting the tariff of 1828—a tariff which was afterward the subject of a bitter controversy, and was styled in the South the tariff of abominations. Before that time large amounts of taxes had been collected by direct taxes on lands, and excises on the distillation of liquors, on licenses, and stamps. These, however, were abandoned as soon as practicable as temporary expedients. And now, after the adoption of the tariff of 1828, the manufacturers, constituting a powerful influence in the Northern States, were interested to prevent any other mode of taxation for the support of the government than by a tariff which would continue or increase their pro-

tection. For the same purpose also they were interested to favor the appropriation of money for a general system of internal improvements, and for all other objects that the government could be induced to foster. This influence has greatly aided in shaping taxation by the government from that time to the present. Previous events had tended to prepare the public mind for this liberal construction of the powers of government by which these measures were adopted. They were the assumption of the revolutionary debts of the States; the charter of a national bank, and its recharter in 1816, approved by President Madison by a change of his opinion in favor of it; the action of President Jefferson approving the establishment of the Military Academy; his sending Lewis and Clark to discover and claim Oregon on the Pacific Ocean; the purchase by him of Louisiana for fifteen millions of dollars without constitutional authority, for which act he sought a confirmation by an amendment of the Constitution, which, however, was never made; the recommendation by President Jefferson of an amendment of the Constitution to establish roads, canals, and other internal improvements; the war of 1812 with Great Britain, which cost the United States one hundred millions of dollars; the purchase of Florida for three millions of dollars; the assertion of what was called the Monroe doctrine, which was a claim of right on the part of the United States to interfere to prevent any further occupation of American territory by the monarchial powers of Europe; the Panama Mission; and the great increase of diplomatic agents and officers of government.

These events, with a successful administration of the government up to that time, inspired the minds of a large class of statesmen with enlarged ideas of an imperial dominion over North America, and a sort of fraternal protectorate over the whole continent of America, which resulted in the remodeling of parties, and the formation of a party in support of what was called "the American System," which reached its successful recognition in the country by the large appropriations for internal improvements of roads, canals, rivers, and harbors, and the tariff of 1828 for the protection of American manufacturers. Thus the policy fastened on the country to permanently rely mainly on a tariff to supply the means for the expenditures of the government, and the policy of making large expenditures for internal improvements, bounties to ship lines, the purchase of additional territory, the expenses of wars, and numerous other objects have resulted in the necessary consequence that such a tariff would have to be levied as would afford protection to manufacturers; especially, when levied, as it has uniformly been done, with specific reference to the protection of such goods as were manufactured in the United States.

It is true that a few years afterwards, in 1832, by the protest of South Carolina and Georgia against the tariff of 1828, and the

threat and preparation of South Carolina to secede from the Union, the Congress passed a compromise law, by which duties were to be gradually reduced until at the end of ten years they would be fixed at twenty per cent. The compromise was made under the announcement by the President that the power of the federal government would be used to prevent secession by a State, which from its general approval at the time put an end, perhaps forever, to the interference of the action of a State in influencing the action of Congress and the government, as it then did and had previously often done. This reduction soon disappeared by the continuation of the policy that had been inaugurated of making large appropriations for the grand objects that had been undertaken by the government. It is but just to admit that the administrations whose acts mainly contributed to establish these new powers in the government were professedly controlled by the principles of the Virginia Resolutions of 1798 and 1799, which repudiated federalism and supplanted it with Jeffersonian republicanism. And this is a most notable illustration of how men's minds and actions will be changed when they are put in power and required to act in emergencies.

Having shown how a protective tariff was permanently fastened upon the country, and the influences tending to perpetuate it, it is unnecessary to trace the legislation of Congress by which it has at one time been reduced and at another time raised again, which has repeatedly occurred. Its continued existence is amply evidenced by a constantly increasing investment of capital in manufactures from the time the policy was inaugurated to the present time, and by the great fortunes acquired by those engaged in them.

It is the policy of the government to-day, and there is no organized body of statesmen that proposes to abandon it now or in the near future. Both of the two great parties in the country are in favor of so arranging the tariff as not to materially affect prejudicially the interests of capital and labor engaged in manufactures. That is an avowal of favor of protection as plainly as though it were expressed. Both parties are in favor of modifying the tariff so as to avoid the excessive collection annually of over fifty millions of dollars which is not needed to meet the annual expenditures of the government. They differ simply about the manner of doing it, and the plan proposed by either party sustains the policy of protection. If protection is a positive good for the whole country there would seem to be no difficulty in getting rid of this excess of fifty millions of revenue by increasing the duties sufficiently to exclude the foreign importations that produce that amount of revenue. But the fact that this surplus has been increasing for several years past without that easy plan for getting rid of it having been adopted might raise a doubt about the principle of the more protection the more good to the country.

One party seeks to accomplish that object by reducing the duties on some articles of commerce and admitting other articles free of duty. The other party, not agreeing to that, seeks to make a reduction upon the internal revenue and some other subjects. The agonizing struggle by Congress over this unfortunate excess of the revenue reminds one of the perplexing dilemma of the man who had a ferocious animal by the ears and could neither hold on nor let loose the angry beast without danger to himself. To show that there has been a gradual increase in the tariff and of the appropriations that made it necessary, reference may be made to statements made in debates in Congress by distinguished statesmen.

The average annual receipts of the government for the decade ending 1800 was \$5,000,000; of that ending 1830, \$19,000,000; of that ending 1860, \$53,000,000; and of the eight years ending 1888, estimated \$365,000,000. It is stated that the foreign articles imported amount to \$723,000,000. A duty averaging 47 per cent. is laid upon \$479,000,000 worth of those articles, and \$244,000,000 worth of them are admitted free. The tariff so laid is said to produce \$225,900,000 of revenue, which added to the internal revenue from whisky, tobacco, etc., amounts to over \$50,000,000 more than is necessary to pay the annual expenses of the government.

It is estimated that for every dollar of the whole of this revenue that is received by the government there are five dollars paid for similar goods to American manufacturers as a bounty for manufacturing similar goods in the United States. This is upon the supposition that the American manufacturer will sell his goods at the same price that similar foreign goods can be sold for after the average 47 per cent. duty has been added on them upon passing through the custom house of the United States, and that he sells five times as many as are imported. The effect of this, if this estimate is correct, is to give a protection bounty to American manufacturers of over one billion of dollars by the tariff. Now suppose this estimate of the protection bounty to the manufacturers to be approximately correct, or even two or three times greater than a correct estimate, it exhibits a most extraordinary state of things in a country which boasts of being "the land of the free and the home of the brave," in which there are over fifty millions of persons who are consumers of manufactured goods who suffer themselves to be taxed to furnish such a bounty to American manufacturers who by the last census numbered only something over fourteen thousand and now probably a thousand more. Had the three millions of people in the American colonies in 1776 tamely submitted to be taxed for general revenue by the British parliament it is not doing that government justice to suppose that such a burden as this would have been imposed by it upon the American people. There is nothing in the history of that period to justify such a supposition. The expense of the civil war made it necessary to lay a tax

upon property within the States, the manufacturers having lost their customers in the South. They being restored to them after the war, a return was made to the protective tariff and to internal tax on whisky, tobacco, etc., which is itself a tax on labor and industry as well as the tariff is.

What is the significance of protection as a permanent policy of the government? It is, first, to furnish a home market for all goods manufactured in the United States; and, second, to continue it until the increase of manufacturers and their employes consume all of the surplus products and raw materials of this country, including that which is now exported to foreign markets. How long will that take, when it is considered that there is about four times as much capital invested and six times as many persons employed in agricultural pursuits as there are in manufactures, the agricultural exports now being over \$500,000,000? If that result could be attained in fifty years, with its enormous burden upon the labor and industry of the people, during that time it would still require a protective tariff to be maintained to enable the surplus manufactured goods to be sold in foreign markets, if it be true that they can not now and could not then be manufactured as cheaply here as in Europe. For the United States must always export American production of some sort in return for such imports as can not be or are not produced in this country. The only things that could then reduce the tariff to the revenue standard would be pauper labor, as it is called, and an accumulation of capital in manufactures equal to or sufficient to cope with that possessed in Europe. Should the day ever come that this country shall come to be classed as a manufacturing country, as England is to-day, and the independent agriculturist no longer holds the balance of power in the government, it will be a day of mourning for the lost freedom and equality of the people. Republicanism will be dead, for dependent operatives, and farm renters, and trades people can not maintain it. It is useless to speculate upon such a contingency now when the agricultural resources of this country are not half developed and will not be for many years in the future.

There are many subjects of interest connected with this policy of protection, the discussion of which would occupy too much space for a single discourse—such as the loss to national wealth by a bounty to a pursuit that can not be profitably followed without it; the unfixing the true standard of labor in the minds of the people, which should always be demand and supply; its formation of classes, struggling for more and more benefits the more they get; its begetting the worship of Mammon as the greatest good in human life; its encouragement of extravagant expenditures of the people's money; the reason and effect of closing factories or putting employes upon half time at work; why the operatives get no share of the bounty earned by their labor; why it is that protected

goods can be sold in foreign markets for less than at home; the demoralization of giving favors to the private business of individuals by the action of the government, engendering discontent and disloyalty; and the controlling power of combined capital to direct the course of taxation, so as to add to its profits. Pretermittin^g all these, it may be of interest to ascertain and fix as nearly as practicable the real burden imposed upon the people by this high protective tariff. I find it stated that by the census of 1880 there were in round numbers a population in the United States of fifty millions, composed of ten millions of families, and revenue collected of about four hundred millions of dollars, by which a tax was imposed of about eight dollars per capita, and about forty dollars per family. This general average estimate includes thousands of persons, and even of families whose wealth enables them to bear high taxes without any feeling of oppression. The large class of people who are most affected are those who make a living by their own work, either with or without property to aid them in doing it, of whom there are from fifteen to twenty millions—about eight millions being devoted to agricultural pursuits. At least one-half of the articles that they have to buy annually for the use of themselves and of their families, if they have them, are such things as are embraced in the schedules of the tariff. An average tariff of 47 per cent. on the articles thus purchased is in effect the same as though the government should impose a tax upon them in money equal to 47 per cent. of the value of the articles purchased. The articles purchased are the products of the current labor devoted to the business in which such persons are engaged; and therefore the tariff takes from them in effect a tax upon their labor performed in making the money to buy such articles. Though there may be no means of ascertaining the exact burden imposed upon this large class of persons, still it is evidently extremely onerous from the well known fact that the great majority of this laboring class spend annually nearly all of their hard earnings for a bare support in humble respectability.

It is peculiarly oppressive upon the farming class, very few of whom get any protection. The farmer pays a duty upon much of the material that enters into the construction of his residence, and other buildings, of his wagon, plows, and other farming implements, also upon the clothes, bedding, and other household and kitchen furniture, and indeed upon almost everything necessary to be used in a family in the most ordinary circumstances, excepting bread and meat, and the vegetables and fruits of his farm. That it is extremely oppressive upon the farmer is evidenced by the remarkable depression of the farming interest at present. I have seen it reported that in the ten Northwestern agricultural States there are estimated to be farm mortgages to an amount largely over two billions of dollars, and even ten millions of dollars in

Texas, notwithstanding our homestead protection. So depressed has this business become of late years, that a farmer may own enough good land to cultivate himself, with stock and implements to work it, and make fair crops without being able to make but little more, if any, than a bare support for himself and family, by the hardest kind of work and close economy. Let the investigator go where he will throughout Texas, and throughout all of the cotton States, that make seven millions of bales of cotton, which is furnished to the cotton mills of America and Europe; let him visit the farm houses and farms, see the million and more of laborers—white and black—that make that cotton; enquire into their mode of life, their hard labor, and their financial condition, and he may then be able to estimate, without fixing the respective amounts in dollars and cents, that one-fourth, or one-fifth, or one-sixth, or at least one-tenth of the money value of their labor, accordingly as they may furnish themselves with the necessaries of life, is taken from them by this protective tariff to add to the wealth of the comparatively few manufacturers far more than for the support of the government. In former times a rural home was the pride of the people of this country; a place of peace, independence, and plenty. Now many who can, or must do it, are fleeing from the country, and seeking employment in trade, or some other business, in towns and cities, under the hope that easier and more profitable employments will better enable them to bear up under the tax imposed upon their labor by the protective tariff of the United States, and the tax upon their property, if they have any left, by their State.

Thus the great mass of people in this country, who have to work for a livelihood, whose labor builds up the wealth, feeds the people, and furnishes the raw material that generates the great commerce of this country, are placed in degraded disfavor by the manner in which the taxes are levied upon their labor and industry, instead of being levied upon the property and incomes of the rich, and other property holders, who are living in ease, and often in luxurious extravagance, relieved to a great extent from taxes to support the government that protects their property.

Such a tax, imposed directly on each individual in dollars and cents expressed, could not be collected without the aid of an overwhelming military force, subjugating the people and reducing them to hopeless slavery.

It must not be understood that this presentation of our condition in regard to taxation, inadequate as it may be, is designed as a reflection upon the many distinguished and good men who are the congressmen of to-day. They did not fix their position and duties as legislators. That was done by their predecessors, ranging through many years back, who fastened certain policies upon the government of the country. Those of them who in late years have entered Congress have simply dropped into a long-flowing

current, that drifts them along in its settled course without the power of arresting or diverting it otherwise than by years of arduous efforts, if ever. They find themselves in an organized body, acting as the delegated managers of the private pecuniary interests of all the people as one great family, distributing benefits to persons, to classes, and to sections of country, and imposing burdens upon others according to policies long since inaugurated, and now brought to full maturity of operation.

It assumes to take cognizance of and watchful care for all of the private occupations and pursuits of individuals and classes, and of the private and public welfare of all of the people from the Atlantic to the Pacific oceans, and from the gulf to the great lakes, not omitting an occasional concern about the fisheries of the north and the operations at Nicaragua and Panama, as well as upon the high seas and islands. The immense multiplicity of subjects thus embraced furnishes continually some one or more perplexing questions to be solved, as the negro problem, then the railroad regulation, and now the trusts. These may pass away in time, but the one perplexing question that stays—that has staid with bitter strife for more than fifty years past, and still says, and will not down,—is the protective tariff. The Senate of the United States was made famous as one of the most dignified bodies of modern times by the discussions of great principles and measures of state by great men. We may now behold the spectacle of grave senators representing States of the Union in that body engaged in an earnest disputation or consultation over the bounty to be given to the man who makes gentlemen's and ladies' cuffs, and spool thread, and buttons and brooms, and soap, and thousands of other things great and small contained in the schedule of the tariff. What a descent from their high position! "O tempora! O mores!" And the worst of it is that interested parties from all over the country are continually besetting them to give them information how to do it, presumable because they do not know how to do it themselves. And it is safe to say that very few members of Congress ever will know as long as the effort is made to adjust a different duty upon three or four thousand different articles in the tariff law. How long will this unjust contribution from muscle to money continue?

It will continue until the American mind can be educated up to the full understanding, if ever it can be, that the people in this country of grand and exhaustless natural resources, in all of the means of individual and national wealth, are capable of taking care of themselves, and need not to be taken care of as the children of a large family; and, if a tariff is continued, that the true province of the federal government is to lay on *all* foreign importations one uniform *ad valorem* tariff, just sufficient to defray the necessary

expenses of an economical republican government, which will lift a great burden from the consumers and will still be ample protection for domestic manufacturers. The whole country would then stand upon its own abundant resources for the advancement of its own material prosperity, as it should do.

A just financial system being thus permanently established all other things would adapt themselves to it.

Then members of Congress would no longer be elected as advocates of a particular private interest!

Then the wrangle, *wrangle* over protection that has rung in the people's ears for a half a century would cease!

The extravagant expenditure would lose the motive that has so long prompted it!

Then the almighty dollar of to-day would lose its power to control elections!

And then the government—truly republican—being just to all and giving special favors to none, would be the pride and blessing of a patriotic people.

And better still, if the time should ever come when it shall be seen and acted on, that the true principle in a republic is that the labor materialized into permanent property shall be made to support the government mainly if not entirely, and not the labor itself in the effort of the acquisition of property, the vast majority of people, the millions who reach maturity of manhood and womanhood, and who must commence their life-work for their own self-elevation without property to assist them in it, would be encouraged to improve their condition in life, with the knowledge that the government did not impose any drawback upon their labor by taxing the necessities of life. Had such a principle been acted on during the past one hundred years in the United States there would not have been so many millionaires, but its tendency would have been to have exhibited a widespread general elevation of the great mass of the people, that would have made American citizenship honored all over the enlightened world.







UNIVERSITY OF TEXAS.

PUBLIC LECTURE, BY PROF. O. M. ROBERTS.

THE USE AND MISUSE OF THE PRINCIPLE IN THE EXPRESSIONS : "ALL MEN ARE CREATED EQUAL. THEY ARE ENDOWED BY THEIR CREATOR WITH CERTAIN INALIENABLE RIGHTS; AMONG THESE ARE LIFE, LIBERTY, AND THE PURSUIT OF HAPPINESS."

It has been said "that a people cannot escape their history." That depends upon whether or not it has been faithfully recorded for its transmission to future ages. Having lived during the occurrence of great public events in this country, I have felt it to be a duty, in public lectures here, to set forth the facts pertaining to them, with their results, as impartially as I can from a Southern standpoint, for the information of those of subsequent periods, who could have no personal knowledge of them.

These two propositions asserted in the Declaration of Independence, written by Thomas Jefferson, and adopted by the Continental Congress, on the 4th of July, 1776, may be seen to have a proper relation to each other, by reversing the position in which they are placed, so as to read: All men are endowed by their Creator with certain inalienable rights; among these are life, liberty, and the pursuit of happiness; and that in respect to those rights, they are created equal.

They were announced as a predicate for what immediately follows, which is, "that to secure these rights, governments are instituted, deriving their just powers from the consent of the governed; that whenever any government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to affect their safety and happiness." This connection shows that the rights referred to are social rights, pertaining to men as members of society, which are here claimed to be inalienable, because they are rights, upon the maintenance of which, their existence and well-being as individuals depend. It is the right that pertains to each individual, recognized by the law as the right of self-defense in society. It is personal in the sense, that each one can exercise it for himself. But it does not give him the

right of defense of another person, except the aggression to be resisted applies to both persons in some common cause. As in a case where the government by its actions endangers the rights of the people, so as to be a common grievance. Then each person may act with and for each and every other person in the association, for the common self-defense of their rights held in common. In discussing the application of this right, by which important results have been accomplished, it is necessary to keep this distinction in the exercise of the right in view. It is in analogy to this distinction that the law of nations does not allow the people of one nation to interfere, for the correction of evils existing upon the people of another nation, while they may exert themselves to correct evils in their own nation.

Like the right of self-defense, which is universally recognized as both a natural and legal right, its exercise is appropriate when, and only when, the aggression upon it is made by some one who has no right to make the aggression. When there is no aggression upon a particular person, his right of self-defense is not required to be exercised. Nor is it required or permitted to be exercised by one person for the defense of another person, who does not occupy such a relation to him as gives him a legal right to do it, as in the case of a parent's right to defend his child, which does not equally apply to the defense of a stranger. Suppose a person should undertake to defend a stranger, that he may deem to have been unjustly aggressed upon by another, it is not upon this right of self-defense that he would act, but it would be upon an assumed right to be the champion defender of the right of another, that had been endangered, upon some sentiment of humanity or of justice, or as sometimes it is done, by one who is actuated by the selfish motive to gain the approbation of others, as being a chivalric suppressor of wrong generally.

True, our municipal law permits a person to defend a stranger that is attacked in a manner that puts his life in immediate and imminent danger, to the extent even of killing the assailant, when the necessity for the interference is apparent. This is a right to act which is given by the government, that is permissive and not compulsory, and when practised it is the right of the government being exercised by the individual. And so it is in any other case in which one man is permitted to act in the defense of another by the law of the land. Whatever may be the right or motive upon which such act is performed by one person for another, it is not by the right asserted to belong to all men in the Declaration of Independence.

Having endeavored to convey a definite view of the nature of the right asserted to have been endowed upon all men, it will be proper to consider how it was intended to be applied. An expression may be used in an instrument of any kind, which may be

appropriate to the subject matter treated of, in the connection in which it is found, which, as an isolated proposition, may not be universally correct in every respect.

There may be expressions in the opinion of a judge in deciding a case, which may be objectionable as abstract propositions, and which, when applied to the facts and law of the case under consideration, may have been used to reach a proper result, and be appropriate in that respect.

The proper meaning to be attributed to such expressions, when found in any instrument, must be arrived at by a consideration of the general purpose of the instrument, in view of the circumstances, at the time and place, when and where they were made. What, then, was the general purpose of making the Declaration of Independence in which these expressions are found? During the ten years preceding the adoption and publication of it on the 4th day of July, 1776 by the Congress, there had been a co-operative effort by the American colonies to induce the English government to abandon its purpose of taxing the colonists to raise a revenue to be devoted to the English treasury without their consent. The effort was by petition, remonstrance, and other pacific means, such as subjects of the English government could appropriately resort to for the redress of grievances. There was then no political connection between the colonies. Their action was co-operative only for the redress of a grievance which was common to each and all of them, and their co-operation was to give greater force to their complaints, than if presented singly by each colony.

The political connection of each colony was directly with the English government, as the sovereign power over it. Whatever powers of local government within its defined territorial limits it had, were granted by a charter from the crown, and by the law of parliament, regulating its trade and commerce. The reciprocal obligation of allegiance and protection existed between the colonists and the English government. It was in effect an English government established over English subjects, within a certain defined territory in America. As is the case with all governments, it was ostensibly established for the protection of life, liberty, and pursuit of happiness of the people in the colony, who were governed by it. Nothing had occurred to materially excite the apprehension of the colonists, that any different purpose was designed by the ruling power, until the English parliament had assumed the right to tax the colonists, not to defray the expenses of the colonial government, but to be added as general revenue to the English treasury, to defray the expenses generally of the English government. If the colonists submitted to the right thus assumed, its exercise had no limit, and their prosperity, and even livelihood depended upon the will of a power, over which they could not possibly have any control.

England persisting in the claim of the right, sent troops to America to enforce it, which early in 1775 resulted in a hostile conflict in one of the colonies, when each one of the colonies co-operated with the others in resistance to the enforcement of the right by the military forces. This was a defensive co-operation, which required action in each of the colonies independent of, and in disregard of the English rule, to the extent necessary to join in the common cause of defense. This action was provisional, in anticipation of a possible reconciliation upon honorable terms, which so continued until early in 1776, when all hopes of such a reconciliation had to be abandoned. Then it was that Congress, composed of delegates from all the colonies, advised the people in each one of the colonies to take such action as would be a public and definite renunciation of their connection with, and subjection to the English government, which was by making a new social compact for an independent government of their own, based upon the sovereignty of the whole body of the people of the colony.

The people of each and all of the colonies promptly acted on this advice, and separately in each proceeded to form a republican constitution (except Rhode Island), providing for a free and independent State; so that each one of them had assumed the absolute control of their own public affairs before the date of the Declaration of Independence. The Congress, with a knowledge of that fact as an accomplished fact, made the declaration for and on behalf of the thirteen States so already established.

The objects of the declaration were to give public notice of the then existing facts, "That these United Colonies are, and of right ought to be, Free and Independent States; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be totally dissolved;" and to state facts indicating the dissolution by the people of the colonies, and to announce the principles upon which they had acted in forming independent governments of their own respectively.

The facts, stated in vindication of the dissolution, exhibited the conduct of England to be such as gave the people no assurance of the protection of life, liberty, and the pursuit of happiness, by which they were absolved from their allegiance to the British Crown, and being thus absolved, the people that belonged to each colony had instituted a government based upon the equal right of each person in the association to participate in its formation so as to form a free and independent State. It is to be observed in all this co-operative action the colonists acted on this principle of self-defense, with which it was stated all men are endowed when the right is attacked. It was self-defense of each one of the colonists in each one of the colonies. The attack was upon the right pertaining to all of them alike, which gave them a right to co-op-

erate, in first seeking to avert it by pacific means, and, afterwards, when the attack was sought to be enforced by military power, to co-operate in a common defense of the right against a military power. The assumption of the power to tax at discretion and without limit, necessarily included the power to jeopardize the life, liberty, and well-being of every colonist in America, both as an individual and as a member of a colonial association. Although the force, that brought on hostilities, was exhibited in Massachusetts, the people in the other colonies were justified in co-operative resistance for the protection of the right, that pertained to each and all of them, and which could only be protected by joint co-operation, and not by separate individual effort. Thus the right of each one of the colonists became the joint right of all in a common defense of it.

The question may be asked is this a right?

In view of the practical transactions then under consideration, to which it was intended to be applied, the proposition, that men are endowed with the inalienable right to life, liberty, and the pursuit of happiness, is correct. To appreciate this, we must consider the relation between society and government, or between an association of people bound together by some common tie, and the established rules of action by which they are controlled in the association. Man is prompted to live in association with his fellow-man by the attributes of his nature, which instinctively demand their exercise. Those which distinguish him as man amongst created beings can only be exercised in society, and not in lonely isolation. They force him to be gregarious, and join himself to others. It is not from want or fear, as has been supposed. It is his natural element. He does not come into society upon a judgment of its advantages, and surrender a portion of his natural rights that he may enjoy the rest of them. It is not a question of calculation at all, for he is born in it, and lives in it as the position for which he is fitted by his nature as man. Wherever and whenever people are collected together in association their employments, and the nature of them, are dependent upon their natural and acquired attributes, and the physical objects by which they are surrounded, in the locality inhabited by them, and by their standard of civilization. Their rules of action individually and collectively must be conformable and adapted to their employments, which results in government of some sort as a necessity. Such a government is not a "necessary evil." It is a necessary benefaction and blessing to harmonize the possibly conflicting elements in the association, and to preserve the association itself in whatever progress it may make in the ascending scale of civilization, in obedience to and consequent upon the innate yearnings of man's attributes.

Hence it is that all combined associations, whether as families or tribes in the primitive ages, or as more regularly organized as-

sociations, when first instituted amongst men, and afterwards as they advanced by a regular progression, until they arrived at the complex ramifications in modern times, governments have existed over all of them as a resultant concomitant.

All of its members are governed, the governors as well as the governed. This applies even to an absolute monarchy, as well as to a republic. The monarch governs his subjects, and they govern him. For if he prescribes and executes permanently rules of action, that debase their manhood, and denies to them the rights of life, liberty, and the pursuit of happiness, he will not long remain their monarch; and a knowledge of that fact governs him. Whether he or they create anarchy, it cannot live. It lives only upon and during the continuance of its own throes, to be certainly succeeded by government, in obedience to the controlling aspiration of man to strive for the wellbeing of his race. In the physical elements, the tornado is anarchy's prototype, in its origin, duration and effects. However different, therefore, may be the form of governments, and however different may be the modes of accomplishing it, the general object in the institution of government is, as stated in the declaration, to secure those fundamental rights of man.

When he has been born and reared up under it, or enters it by naturalization, he does not yield up or alienate to the ruling powers his rights to preserve his life, liberty, and pursuit of happiness, by all the means that may practically be in his power, whatever may be the wrongful aggression by the government upon those rights. If the aggression is remediable in the association, he may use whatever pacific measures are furnished or permitted to him by the government. If, however, the grievance complained of is intolerable, and affects equally the great body of his fellow men in the association, he, with them, has the right, when it is practicable, to assert and maintain it, to alter or abolish the government. Thus it was that "Washington lost the rebel's in the patriot's name." The right equally exists whether the effort to maintain it succeeds or fails.

It is evident that a man is not presumed to have made such an alienation by being or becoming a subject or citizen of a government. The question still remains, can he do it so as to irrevocably bind him? What! Can he alienate, that is, validly transfer from himself the right to seek his own happiness? Can he alienate from himself his liberty? Can he alienate from himself the right of life,—the right to live? There is no consideration possibly adequate for such a contract of transfer. It could only be made under a dire duress, that would destroy his contracting capacity, and in addition, it would be unconscionable, by whatever formalities it might be attempted to be sanctioned. Upon each and all of these grounds, it would not be irrevocably binding upon him.

Shakespeare was not following his learning in law and ethics, but was rather indulging in the privilege of a poetic fancy, when he had his court to adjudge Shylock's debtor to pay his pound of flesh, in discharge of his contract. A man may forfeit his liberty or his life, by his unlawful conduct, but that is giving it up on compulsion, and not on contract, either express or implied. It is not his act of bargaining away his right to his liberty or life.

Admitting that the colonists had good grounds for the exercise of this right, in dissolving their political connection with England, the circumstances were very favorable then to its employment, in the erection of republican governments, founded upon sovereignty of the people of each colony, creating an independent State.

They had long been free from the influences of the distinctions in society, existing in monarchical countries. There was then no order of nobility prevailing amongst them. The great body of the people were farmers, living in their own homesteads. There were then no large accumulations of wealth, sufficient to induce persons to claim precedence on that account. There had not then arisen up any great military chieftans to dictate upon what principles the government should be reorganized. There were no large cities to engender corrupting influences. There were no great factories or mines to be filled with dependent employees. The habits of personal equality and independence had been generally developed from their condition. Though there were many men of distinguished ability amongst them, that of itself was no cause for political inequality in forming the government. There was, therefore, no ground upon which to base a discrimination between the people, in the performance of the work undertaken by them. They had the advantages of long experience in local representative government, with but little interference from the sovereign power in their public affairs.

Having renounced their allegiance to the sovereign power, it was necessary to recognize another sovereign power, upon which to base their government. And in their condition, it was most appropriate to recognize it as a right existing in the whole body of the people in each colony.

The condition of things then generally existing in America were exactly such as were necessary to establish a government in which the whole body of the people could participate in its formation and administration, and rendered it practicable to establish for themselves true republican equality; which is where each individual is allowed to promote his own self-elevation, by any lawful pursuit, without any drawback or unequal burden being imposed on him by the government for the benefit of others, except for the public good, wherein he would be included equally with the others.

When such a government would be carried on for the protection of person and property, there would be no great difficulty in ap-

portioning the benefits and burdens equally,—approximately at least. The difficulty of adjustment arises in the adoption of measures for the public good, which the political wisdom of the statesmen has seldom been able to surmount. As experience has shown, this extravagant effort for the public good has infused into governments paternalisms, that create inequalities in benefits and burdens, that may produce tyranny, the same as may be found in monarchies. It refutes the theory upon which republics are founded, that by giving each individual an equal voice in the creation and administration of the government, he would be equally able to protect his rights, and avert the imposition of unequal burdens. The public good-claim often enables the majority to oppress the minority, and that is not the worst of it, for it may enable the interested few to so manipulate the government, as to oppress the great body of the people for the enrichment of themselves. This public good, while good in itself, when properly applied, is too often the bane of republics, when it is disguised as the wolf in sheep's clothing. The instances of such disguises, and their injurious effects, are now too numerous, and too notorious to require that they should be here specifically pointed out to an intelligent public. The boasted claim of self-government has been verified to the extent of having dispensed with the necessity of a hereditary peerage in this country. But self-government, under a written constitution, with its powers and objects strictly adhered to, required much more than the founding of governments upon the equality and inalienable rights of all men, as asserted in the Declaration of Independence. Even that great achievement may in time be attained, as we may hope, when the great body of men in the organized association shall have learned and acted on the principle, that the public good may best be accomplished, by each one respecting the rights of others equally as he respects his own.

This expression that "all men are created equal," is misapplied, when it is understood to pertain to all races of mankind. The red men of America, and the negroes of Africa have made but little improvement in their condition socially during many centuries, whereas the men of Europe in the same time have arisen from a low to a high state of civilization. This difference cannot be attributed entirely to the difference in the localities of the different races. It must have been, to a considerable degree, attributable to a difference in mental and physical organizations. The race in Europe were endowed with a greater designing and inventive capacity, that enabled them to add improvements upon the first advancements upwards, from age to age, while the social condition of the other races remained stationary, because they did not have that capacity in the same degree. In addition to the difference in the original endowment, it has greatly increased in the reproduction of the white race, during the different stages of its advance-

ment by the effect of heredity. It is not necessary to adopt the whole of the Darwinian theory, to recognize the fact that the natural mental capacity of the white race has been gradually improved by their increasing culture during many centuries. This progression has been produced as a general result, notwithstanding there may have been particular instances, in which the improvement was not exhibited.

Now, the interesting problem is, can the red and black races, with their natural mental and physical organization, be raised to an equal standard with the white race, by education in schools, the same as those attended by the white race. That they can is as yet only a theoretical assumption, upon the belief of the historic account of the original unity of the race of mankind. But is it not more probable, that their peculiar natural organization has been through many centuries, so permanently fixed upon them, that no improvement which they can in time acquire, will prevent them from ultimately disappearing before the power of the white race? That is the inexorable law of races on this earth, however laudable may be the humanitarian efforts to change it, notwithstanding the means and time of its accomplishment cannot now be foreseen. This is the lesson taught by all history of the past.

It would be equally erroneous to apply this equality to the natural capacity of all the persons of the white race. It has been said that the mind of a child is like a white sheet of paper, susceptible of such impressions as may be made upon it by training and education. Experience shows that there is an innate mental and physical organization in most children, that indicates in what direction the most improvement may be made by training and education. Instead of universal sameness in natural organization, it would be safer to affirm universal diversity, in that as in most other work of nature. If all men were organized just alike, society would present an aspect of stagnation, and improvements would more likely result from accident than from design. It is this inequality in mental structure that has been the mainspring of civilization throughout all ages of the past, and is now equally so. Its starting point, in every step of the advance upwards, originated from the designing power of some exceptional mind, by which the objects of nature have been made to do useful work, either to aid, or as a substitute for the muscular power, that was before necessary to do it. This may be illustrated by only a few examples. It may well be imagined what a revolution was produced in social existence, by the construction and use of metallic instruments in works of utility in peace and in war. The designing power of exceptional minds spread the sails upon the seas, and made the wind do the work first done by the oarsmen, which made commerce throughout the world possible. The designing power of exceptional minds increased the power of men, by organizing the Roman legion, that

spread the Roman institutions, arts, learning, and language over a large part of the world. In more modern times, the designing power of exceptional minds created fire-arms the common use of which disbanded the armies of subjects, that were spread all over Europe by the Feudal system, and turned most of them over to the arts of peace, and to the cultivation of their intellects, which was facilitated by the invention of the printing press. Under its influence the civilized world advanced more, in all the ennobling appliances of civilization, than it had done in four thousand years before that time. Men's minds arose above the settled forms of social life, of government, of personal rights, and the great men of Europe proclaimed with eloquence the principles of the new era of human progress. The spirit of it was caught up by the English colonists of America, which rendered it possible, a hundred years ago, to establish for themselves republican governments.

Such a government as that which they erected, could not have been established five hundred years before that time. The doctrine that kings ruled by divine right had not then been exploded. The rights of *Magna Charta* was not and could not have been claimed and secured from the English monarch by the maps of common people. They were secured by the barons, who were themselves so many petty monarchs.

Power and priest-craft manacled the minds and bodies of men. The colonists were as much indebted to the new lights that had dawned upon the minds of men, in the period of their revolution, as upon the condition of their society, and their previous training in local government. What shape will ultimately be given to American society, and to our republican governments, by the designing power of the exceptional minds of Watt and Morse, in making steam and electricity do work for man, must engage the study and efforts of philosophers and statesmen for many years to come.

Centralism in government, the erection of large cities, the growth of corporate power, the increased conflict between labor and capital, the amassing of great individual wealth, the increased facilities and importance of commerce, the general enlargement of the objects and the expenses of governments, are some of the results which have already greatly taxed the powers of those in authority, in efforts for their harmonious adjustment.

Carlisle, a distinguished Englishman, said, in speaking of the Americans, that "Their republican governments were dependent upon elbow-room, and a traditional respect for the constable." I repeat this quaint saying of a great thinker merely to set other people to thinking about where the present current of public affairs is drifting to.

The equality and endowment of rights announced in the Declaration of Independence were not intended to be applied to the Indians that were settled in some of the colonies. The poor red

men, who once inhabited all this country, did not know how to make powder, and guns, and plows, and from their order of civilization had neither the inducement nor the power to make them, and consequently most of them went west as white men advanced from the east. A few scattered fragments of tribes were left, and remained for many years, retaining their tribal state. They were not colonists. They were no part of the associations of persons in each colony, who were active in renouncing their allegiance to the British crown, or in forming new governments. They were under no such allegiance, and had none to throw off. They were no part of the body of people in whom the sovereignty was vested.

For the same and greater reasons they were not intended to be applied to the negroes, who were in most if not all of the colonies. Because most of them were slaves belonging to their masters, who had purchased them as property. They were not there by their own consent as immigrants, but were brought there as slaves from Africa. They constituted no part of the body politic. Slavery was then recognized by the law of nations, the world over, except where it was locally prohibited, as it is now. Where it was not locally prohibited, it did not require a law to be passed to legalize it. It had existed in some shape long before the Christian era, and afterwards all the time in Christian countries, and did then as a just and rightful ownership of property. Not only Christian people sanctioned it by the ownership of slaves, but they engaged in the slave-trade, and the governments of all Christendom sanctioned it as lawful, except where it was locally prohibited. If they had been treated as members in the association that were acting, and for whose benefit the action was being taken, it would have rendered white men unequal, just in proportion to the number of slaves possessed by each one. The slaves were under duress of imprisonment. The very existence of a republic is dependent upon the freedom and independence of the members of the association that forms and administers it. If we will in contemplation go back to that period, and take a survey of the condition of things, and of the public sentiment on that subject, we will not be surprised that slavery in the States was recognized in the Constitution of the United States, by requiring the return of fugitive slaves from one State to another, by limiting the time to 1808, when their importation could be prohibited, and by apportioning the representation in Congress between the several States, so as to add to the number of free persons three-fifths of the number of slaves. This last provision was made upon a compromise, which may not be regarded as being then unreasonable, when it is considered, that in many of the States a property qualification for voting was provided in their Constitutions, and that all of the States except Massachusetts recognized slaves as lawful property belonging to their citizens at that time.

Subsequent to that time, the misapplication of this equality and natural endowment of rights to the negro race, long continued by the Northern people, has produced the most extraordinary results pertaining to this whole country. A proper discussion of this will require some explanatory considerations intimately connected with it.

As the smoke of the great battles in the war between the States has somewhat cleared away, and the results have so far been consummated, we can with a more calm vision scan the past transactions that led to it, and better appreciate their significance at the time and place of their occurrence.

As events may cast their shadows before them, so subsequent events, in a long train of them, may cast back a light upon their connected antecedents, that will enable us more fully to comprehend their import, and the motives that promoted them.

The maintenance of slavery in civilized countries in all former times has largely depended upon self-interest. Whenever there is a sufficiency or redundancy of free labor to do the necessary work, and land has become very valuable, so that rents are high, and the price of slaves has become high, so that what they can produce will not remunerate for the rent of the land, their maintenance and the interest of the money for which they are purchased, slave labor must become unprofitable, and will be abandoned.

The villains in England were slaves during many centuries. In the time of Queen Elizabeth it was complained that there was a redundancy of population. The villains were manumitted, or allowed to purchase their freedom. Soon after peace was made with England, immigrants following the course of commerce poured into the Northern States, that largely added to the increasing labor of their own population.

By this means the country was rapidly developed in the industries in which their slaves were employed, and very soon laws were enacted looking to the extinction of slavery. In some of those States, if not in most of them, the law provided that all persons of the African race born after the passage of the law, should be free after they arrived at the age of twenty-five. The continuous flow of emigration from Europe rendered more and more the usefulness of slave labor unnecessary to do the work of the country. The condition of the people of the South, not having the same advantages from immigration, and slave labor being still in great demand there, it was in the natural course of trade, especially after the prohibition of the slave trade in 1808, that the demand would be supplied by purchasing the slaves in the Northern States, by paying to their owners a reasonable compensation for them. This was fair dealing, without any thought of wrong done by either party, and was an advantage to the North in getting rid of most of their slaves, that they did not need, and to the South in the in-

crease of their labor for the development of their industries. Mr. Clay, of Kentucky, a slave owner, was a member, and I believe president, of an Emancipation Society, organized to send emancipated negroes to Liberia, in Africa. This was before the slavery agitation in the North had alarmed the Southern people in regard to the safety of their property in slaves. He, some years before the year 1860, stated in a speech, that at about that year Kentucky would be in a situation to free the slaves in that State. Why did he say so? Obviously, because he calculated, that by that time the increase of free labor, and the enhancement of the price of land would render slave labor unprofitable in most parts of that State. It is probable his prediction would have been verified, had there been no exciting agitation of the subject of slavery. The time when other States would have been in a similar condition, would have depended much upon the character and value of and demand for its productions, besides the sufficiency of free labor and the high price of land.

Another subject, preparatory to a full understanding of why this natural equality was applied to the negro race, must be considered. That was, the difference in the material interests prevailing in the North and in the South. The condition of things in the North was adapted to merchandise, commerce, manufacture and shipping, and regularly continued to become more so, from time to time. That made it to the interest of the people to have the general government shaped in its action to promote those interests, by a liberal construction of the Constitution.

The condition of things in the South was favorable to agriculture much more exclusively, which did not require to be promoted by the action of the general government, and the people were in favor of a strict construction, which would prevent the government from being specially devoted to promote the material interests of the North. This difference in material interests and political views between the sections rapidly increased, and became more distinct as time passed. During the first twelve years of the existence of the government (from the 4th of March, 1789), its administration was most favorable to Northern interests and political views.

At the end of that time a great political revolution occurred, in which parties were formed, the statesmen in the North being called federalists, and those in the South republicans, and which based the action of the government generally upon a strict construction of the Constitution most favorable to Southern interests, and this continued uninterruptedly for twenty-four years. The struggle that produced this change was of the most exciting and acrimonious character, that fixed in the minds of the people of each party a settled conviction of the right of each, according to the dictates of the interest of each, which remained permanently, and continued

the struggle indefinitely. This division of political sentiment was not always confined to each section, but was generally so. The federalists for a time seemed to be utterly overwhelmed. But such was not the fact. They remained steadfast to their interests, and were ever active in their support. Their cause was made personal as well as political, and adherence to it was made a test of respectability and intelligence to a great extent. The embargo established in President Jefferson's administration, and the war with England; in President Madison's, nearly destroyed the foreign commerce of the Northern States, which greatly intensified the opposition of the people to the government. Statesmen, editors, and preachers could hardly find words of description strong enough to express the ruin of their section, by the action of the government, and in the New England States they boldly advocated a separation, and sent delegates to the Hartford convention evidently to prepare for it conditionally. And in denouncing the government they indulged in the most virulent abuse of the Southern States for their support of it. They argued that the interests of the two sections were too dissimilar to be capable of being promoted under the same government. If this disunion sentiment had spread more generally over the Northern States, and the war had continued a year longer, it is not at all improbable that a number of the Northern States would have seceded from the Union.

During the administration of President John Quincy Adams there was a radical change in the action of the government, by the enactment of the protective tariff of 1828, and other measures favorable to the interests of the Northern people, and prejudicial to the interests of the Southern people. This aroused a most violent opposition to the action of the government in the Southern States, which was most prominently exhibited in South Carolina in 1832, by a preparation to secede from the Union. There were great numbers of people in other Southern States, who took sides with South Carolina, but not enough to put other States in the same attitude. President Jackson's proclamation, that threatened force to prevent the secession, brought a serious issue upon the country, which called in requisition the patriotism of Congress to settle it. It was done by the passage of a law which gradually reduced the tariff prospectively through a number of years, so as to bring it to a revenue standard. This satisfied the South, but was a progressive damage to the interests of the North, by which they became again dissatisfied with the operation of the government. Thus has it been shown repeatedly, that when the government was shaped in its action to suit the material interests of one section, a dissatisfaction would be produced in the other, that created a strong disposition for a separation, though not extensive enough to effect that object in any instance.

The ruling motive in each section in the effort to shape the gov-

ernment to suit it in each instance, was self-interest. It takes a very wise and impartial man to see any difference or conflict between his interest and the public good. It is equally so with political parties, with sections, and with nations.

This success, last mentioned of the Northern people, was partly accidental from the election of John Quincy Adams president, and it was short lived. They, therefore, prosecuted with more vigor the measure that they had acted on, before and after the war of 1812, to obtain a controlling power in the government. This was to exclude slavery from the territories, in order to increase the number of free States. While this was the object aimed at by the politicians, there had been long a growing sentiment of anti-slavery amongst the people that was directed either to a separation of the Northern free States from the slave States, or to its gradual extinction in the whole country, as one or the other might become practicable. This sentiment was based upon the natural equality, and inalienable rights of the negro race equally with the white race. Both objects being sought tended towards the same general result, of antagonism to the slave institution of the Southern States. There were then a considerable number of them in New Jersey and Delaware, and a few in each of the States of New York, Rhode Island, Connecticut and Pennsylvania, as shown by the census. The existence of them there did not prevent a common sentiment of opposition to slavery in those States, as well as in other Northern and Western free States.

As preparatory to some notice of the means used in this last great and successful effort of the Northern people to shape the government for the promotion of their own interest, it is important to bring to view the exact relations between the States as members of the Union. In respect to their internal regulations and domestic institutions they were as foreign to each other as any two independent nations. By the law of nations one State had no right to interfere with another, or to allow their citizens to do it, to the injury of the rights of persons or property of such other State. Any such interference when allowed or encouraged to an extent amounting to a serious grievance would be cause of war as between any two independent nations. The several States, whether free or slave States, in adopting the Constitution of the United States contracted a much more intimate relation by assuming additional obligations, and sanctioning those referred to as being imposed by the law of nations. What was meant in the preamble by the expression. "We the people of the United States in order to (amongst other things) secure the blessings of liberty to ourselves and our posterity do ordain and establish this Constitution for the United States of America?" "We the people" then were neither the negroes whether slaves or free persons. They constituted no part of the people in whom the sovereignty had been vested in the States. At

that time Massachusetts was a free State, and had a law which was in force long afterwards, which made the marriage of white persons with negroes, mulattoes and Indians void. A similar law existed in Virginia. In Maryland there was a punitive law on the same subject. And in none of the States had the free negroes been given privileges or rights equal to those given to white persons. They were then, as they ever had been regarded, an abject inferior race, and did not constitute a part of the people in a political sense. The words "to secure the blessings of liberty to ourselves and our posterity," surely did not refer to negroes or their descendants. The negroes were not the persons referred to in the clause of the Constitution, which reads: "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." So it was held by the court in Connecticut, and afterwards by the Supreme Court of the United States. Ohio, a free State, in 1807 passed a law preventing free negroes from settling in that State except upon giving bond of \$500 conditioned for his good behavior, etc. The right to vote was confined to free white men in the free States of Delaware, Illinois, Indiana, Ohio, and Connecticut. This will suffice to show the political status of the negro as to citizenship long after the adoption of the Constitution, even in the free States. Abundant other evidence of it might be shown. A still more pertinent provision, establishing the relation between the States, in the nature of a treaty stipulation between them individually as separate States, reads as follows:

"No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation, be discharged from such service or labor, but shall be delivered upon claim of the party to whom such service or labor may be due." The persons herein referred to were universally held to include negro slaves. What obligation did free Massachusetts come under to the adjoining State of Connecticut if a slave belonging to a person of the latter State escaped into the territory of the former State, and was followed and claimed by him? First it, as a State, all of its officers and people were bound to recognize that the slave was the lawful property of the said owner, upon his showing his right to the slave by the laws of Connecticut, notwithstanding slavery had been abolished in Massachusetts. Secondly, it was bound as a State to take such active measures as were necessary to secure to the said owner the delivery of his property. The obligation was not a negative one to permit the owner to recapture the slave if he could. It was a positive duty that required action on the State through its au-

After that, and even after the election of Abraham Lincoln, the majority of the people of the United States were anxious to

thorities to remove every obstacle that might be made by its own citizens, so as to have its own officers acting for the State to deliver the slave to the owner. Ohio, a free State, was under the same obligation to Kentucky, and so with all the other States to each other. "

There is another clause establishing the relation between the States as follows: "A person charged in any State with treason, felony or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

This requires every State to respect the right of every other State to determine what facts within it shall constitute a felony or other crime, and when a charge is made against a person who has committed it and fled to another State other than the one in which he was present and acting in the commission of it, and he is found in such other State, that State, in which he is found and demanded, has no right to refuse or fail to deliver him up, because the facts charged would not be a crime in such other State.

Every officer of every State and of the United States take an oath to perform the duties of his office according to the Constitution of the United States, which contains these provisions. They, as expressly stated in the Constitution, constitute the supreme law of the land in every State, "anything in the Constitution or laws of any State to the contrary notwithstanding."

They imposed an obligation more binding than a treaty by being a part of the Constitution of every State,—being part of that of the United States. A State that was seriously injured by the failure of another State to comply with these obligations, had no recourse directly upon the sister State; for by the Constitution one State cannot enter into any agreement or compact with another State, nor enter into war against another State while being in the same Union of States, and under the same Constitution. That of itself should have added to the constitutional, a high moral obligation for their faithful observance.

During President Washington's administration there was a law passed by Congress to enforce the provision requiring the return of fugitive slaves, and another one in 1856, which were sustained by the supreme court as constitutional. Very soon after the Northern States had gotten rid of most of their slaves, the sentiment that slavery was a moral and political evil became general if not universal, and that greatly aided in the efforts of all sorts to shape the government to be conformable to the Northern interests.

In 1820 it manifested itself upon the admission of Missouri into the Union. After an exciting struggle in Congress it was admitted as a slave State by a compromise, in which it was agreed that any States thereafter formed in territory north of $36\frac{1}{2}$ degrees north latitude should only be admitted as free States, and those south of said line should be admitted either as slave or free States as might be determined by such States. This gave the North a great advantage in the division of the territory. President Washington in his farewell address had advised strongly against sectional divisions. Jefferson, then still alive, in writing to a friend, said that "he considered it the death knell to the Union;" that "a geographical line, coinciding with a marked principle moral and political, once conceived and held up to the angry passions of men, will never be obliterated, and every new irritation will make it deeper and deeper." In this expression of regret, he evidently referred to the moral principle, involved in the slavery question, and to the political principle, involved in the promotion of mutual interests, both of which were well calculated to arouse the passions of men, on both sides of the geographical line, that had been established. It resulted as he then feared it would. For by the efforts of the Northern States all of the territories afterwards were made free States, or held as free territory practically, notwithstanding the law of Congress in 1850 permitted the slave holders to carry their slaves into said territories, and there hold them as lawful property, and the supreme court in 1856 decided that Congress had no power to prevent it.

The moral principle referred to, which related to opposition to slavery, though it had long been exerting its influence, became more and more active continuously after the compromise in 1832 on the tariff, by which the Northern material interests were not promoted by the action of the government, as they had been during the administration of John Quincy Adams. The effort to acquire free territory created a large party called the Free Soil party. A more extreme anti-slavery party were known as Abolitionists, whose professed principle of action was exhibited by Joshua Giddings, who was the first man of that party elected to Congress. At the Chicago convention he offered the following resolution:

"That we solemnly reassert the self-evident truths, that all men are endowed by their creator with certain inalienable rights, among which are those of life, liberty and the pursuit of happiness, that governments are instituted among men to secure the enjoyment of these rights." In support of this he said, "I offer this because our party was formed upon it. It grew upon it. It has existed upon it.—And when you leave out this truth you

leave out the party." This, at that time was an after-thought, to hold forth one amongst a number of political principles for their agitation of slavery in the South. And if it had been in its origin a ground claimed for their action, it would have been clearly a misapplication of the principle as it was intended, for it would have been an assertion of it by one class of persons for the benefit of another class, and not the right of self-defense.

By the joint influence of these two parties the Northern States passed laws, which in effect prevented slave-holders from recapturing their slaves, that were decoyed, or voluntarily fled, to the free States, by which the Southern people lost large numbers of their slaves and slave property in the border States was greatly diminished in value. This was vindicated by Senator Sumner of Massachusetts, in 1854. He said; "To the overthrow of the slave power we are summoned by a double call, one political, and the other philanthropic, first, to remove an oppressive tyranny from the National government, and, secondly, to open the gates of Emancipation in the slave States." In alluding to the law of Congress to enforce the return of fugitive slaves he said, "The Fugitive Slave Bill, monstrous in cruelty, as in unconstitutionality is a usurpation which must be opposed." This was the common sentiment of the leading men of the party, by which the Northern States refused to take any active steps to comply with their constitutional obligation for the return of the fugitive slaves, and in effect nullified the law of Congress for that purpose, which had been decided by the Supreme Court to be constitutional. In obedience to this sentiment the governors of the States of Ohio, New York and Maine refused to honor requisitions for the return of persons, who had been indicted for stealing slaves, upon the principle doubtless, that a human being was not a subject of larceny, thereby violating the clause in the Constitution, which required the return of criminals, that were indicted for felonies according to the laws of the Southern States, that had a right to determine what acts done within them amounted to a felony.

Just in proportion to the agitation and influence of the opposition to slavery in the North, the people of the South became more and more aroused in support of their peculiar interest, until it pervaded all classes of persons,—those that had slaves, and those who had none. It is not my purpose to rehearse the angry altercations, or the opprobrious epithets uttered on each side against the other.

Mr. Seward put the issue before the Southern Senators in a speech in 1858, as follows:

"The interests of the white race demand the ultimate emanci-

pation of all men. Whether that consummation shall be allowed to take effect with needful and wise precautions against sudden changes and disaster, or be hurried on by violence, is all that remains for you to decide." This was full notice served upon the country of what was designed by the Republican party, by the statesman who did more than any one else to organize that party, by the combination of other parties into the crusade against slavery.

After that, and even after the election of Abraham Lincoln, the majority of the people of the United States were anxious to preserve the Union, if there could be any settlement of the questions at issue honorable to both sides, though the extreme partisans on both sides preferred a dissolution of it. The effort to accomplish the reconciliation came from the Southern side. In the Congress of 1860, Senator Crittenden, of Kentucky, offered a resolution to inaugurate an amendment to the Constitution to re-establish the line of $36\frac{1}{2}$ degrees of north latitude, as in the Missouri compromise, for a settlement. The legislatures of Virginia and Kentucky approved it. It was offered again in the Congress of 1861, before the inauguration of President Lincoln. The vote on it stood eighteen for and twenty against it,—the majority all being Republicans. Mr. Douglas, in his speech in the Senate upon the subject, said: "The only difficulty in the way of amicable settlement is with the Republican party."

The Legislatures of Virginia passed a resolution requesting all the States of the Union to send delegates to a Congress to meet in Washington on the 4th of February, 1861, to take into consideration the affairs of the country, and devise some plan if possible by which the Union under the Constitution would be preserved, and harmony once more restored. In pursuance to that call, delegates from sixteen Northern and five Southern States appeared in the Peace Congress (as it was called), over which Ex-President John Tyler presided. Senator Salmon P. Chase, a leader in the Republican party, representing Ohio, and who, as then expected, was shortly afterwards appointed Secretary of the Treasury, said in substance, addressing his discourse to the Southern delegates, that the Northern States would not surrender their advantage from the late election, which they considered was a sanction of their principles; that they would not consent for slavery to be established in the territories, and that they would not aid in the return of fugitive slaves, and that the provision of the Constitution requiring them to do it was "a dead letter," and would not be complied with. His only suggestion for a settlement was, that if a master could prove his ownership of a fugitive slave,

he should be paid for the value of his services from the national treasury, and let the negro go free. This speech being backed by a large majority of the delegates, destroyed all hopes of a settlement.

The two efforts of the South for a settlement having thus failed, nothing was left them but to live in the Union on terms of inequality, or take steps to separate from it.

Mr. Webster, the great Union expounder of the Constitution, had said in a speech in 1851, "If the Northern States refuse wilfully and deliberately to carry into effect that part of the Constitution which requires the restoration of slaves, the South would no longer be bound to observe the compact. A bargain broken on one side is broken on all sides." To Southern statesmen this doctrine presented a possible means of protecting the institutions of the South, and was generally sanctioned by them in advocating the secession, which brought on the war, in which the South was overwhelmed by superior means and numbers.

After the war commenced, and the Northern armies were filled promptly under a resolution of Congress, giving a pledge to the country, that the war was waged to preserve the Union, with all the dignity, equality and rights of the States unimpaired, "and not for the purpose of overthrowing or interfering with the rights or established institutions of those States," the extreme wing of the party urged the President to issue a proclamation freeing the slaves. For a time he objected, saying, "I do not want to issue a document, that the world will see must necessarily be inoperative, like the Pope's bull against the comet." Still the abolition pressure was so strong that in a few days afterwards the proclamation was issued in obedience to the principle "that all men are created equal." At the close of the war, President Johnson reconstructed the Southern States upon their surrendering what he deemed to have been the issues of the war, to-wit: The freedom of the slaves, and the right of secession. But being a new convert, he omitted or declined to recognize and enforce the additional principle, that the negroes as well as the whites were endowed by the Creator with certain inalienable rights, which would secure their equality as citizens of the United States.

To accomplish that object, there were two insurmountable difficulties under his plan of reconstruction. First, it had been previously decided by the Supreme Court, with six of the nine judges agreeing to it, that Congress had no power under the Constitution to naturalize a negro so as to make him a citizen on an equality with white people. And secondly, if the members elected to Congress from the eleven Southern States, had been

admitted to seats, and in President Johnson's plan, the 14th and 15th Amendments to the Constitution could not have been passed placing the negroes on an equality with the white people in the enjoyment of legal and political rights.

Therefore it became necessary to abolish the governments that had been erected, in order to pass those two amendments, and thereby, on the principle of the natural equality announced in the Declaration of Independence, to introduce into the Republican family of American citizenship, for whom alone, as white people, that principle was originally intended, four millions of negroes of African descent. And that object has been prosecuted by the Northern States, not only to enforce a religious sentiment but also as the means of shaping the general government to promote the peculiar material and pecuniary interests of the Northern people, to the great prejudice of those of the Southern people.

I have now traced the points of political history in this great struggle between the different sections, North and South. But to understand the animus of its origin and progress properly, we must raise our view in seeking for a cause far above and more potent than the mere political issues involved in it.

In doing so, we will find that it was a sentiment generated in the North upon a conviction of right, and in the South a sentiment upon a conviction of wrong done to its people. History shows us that men's passions are aroused to put forth greater efforts upon a pervading sentiment, that takes possession of their minds, than is ever produced by the exercise of judgment.

It may be started upon some prominent idea of human rights, or of wrongs, or of religious enthusiasm, and grow and spread until it becomes a controlling sentiment, that sinks every other consideration into comparative insignificance. Such a sentiment animated the people of Europe in the Crusades. Such a sentiment animated the people of America in the war of independence.

In former times such cruelties had been inflicted in the punishment of slaves and of criminals, in religious persecutions, and in the African slave trade, as produced a revulsion of public sentiment before the end of the last century, which started a movement in France, England and America in opposition to it, which spread and increased, in varying intensity, and means of accomplishment, so as to embrace a large body of the people of the Northern States. There being then no self-interest to oppose it, and it being stimulated by extravagant stories of the cruelty of Southern masters to their slaves, it was worked up into an irresistible religious sentiment against slavery, which in the end would admit of no compromise. In the Southern States, this drift of sentiment met with the opposition of self-interest, that

made them stand upon their constitutional rights, and just in proportion as they were infringed upon, they became more determined to maintain them, against the what they considered unjust interference of others in their domestic relations. This interference, by the agitation of slavery in the North and its consequent results, aroused a sentiment of antagonism that finally pervaded most of the people of all classes in the Southern States, that fixed in their minds a high resolve to have their constitutional rights secured in the Union, or failing in that, to withdraw from the Union to control their own public affairs. When at last the crisis arrived, the sentiment of both sections was inflamed to a pitch of desperation, that forced them into conflict irrespective of consequences.

It was really only after the close of the hostile struggle, that, upon deliberate reflection, the principle "that all men are created equal, and are endowed with inalienable rights," was fully acted on to consummate a revolution in the government, much in excess of the original designs of the federalists of the North.

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